

No. 10809

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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LAWRENCE W. BRADY,  
Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

OCT 8 - 1944

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

1840

1841



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

SOL A. ABRAMS, ESQ.,

406 Montgomery Street,  
San Francisco, California.

Attorney for Defendant and Appellant.

FRANK J. HENNESSY, ESQ.,

United States Attorney,  
Northern District of California.

JAMES T. DAVIS, ESQ.,

Assistant United States Attorney,  
Northern District of California.  
Post Office Building,  
San Francisco, California.

Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States District Court for the Northern District of California.

### INDICTMENT

First Count: Jones-Miller Act, 21 USC 174:

In the March, 1944 term of said Division of said District Court, the Grand Jurors thereof, on their oaths, present: That

LAWRENCE W. BRADY, and  
MARGARET BRADY,

(hereinafter called "said defendant"), on or about the 4th day of April 19, 1944, in the City and County of San Francisco, State of California, within said Division and District, fraudulently and knowingly did receive, conceal, and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as approximately one ounce and 13 grains of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

Second Count: Jones-Miller Act, 21 USC 174:

And the said Grand Jurors upon their oaths aforesaid do further present: That at the time and place mentioned in the first count of this indictment, within said Division and District, said defendants fraudulently and knowingly did facilitate the transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin in quantity particularly described as ap-



proximately one ounce and 13 grains of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendants then and there knew.

FRANK J. HENNESSY

United States Attorney [1\*]

[Endorsed]: A true bill, Paul B. Fay, Foreman. Presented in Open Court and Ordered Filed Apr. 18, 1944. C. W. Calbreath, Clerk. By Edward A. Mitchell, Deputy Clerk. [2]

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District Court of the United States, Northern District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 20th day of April, in the year of our Lord one thousand nine hundred and forty-four.

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

Present: The Honorable Michael J. Roche, District Judge.

No. 28520-R.

UNITED STATES OF AMERICA,

vs.

LAWRENCE W. BRADY and MARGARET  
BRADY,

ARRAIGNMENT

This case came on this day *ex parte*. The defendants Lawrence W. Brady and Margaret Brady were present in the custody of the United States Marshal and with their attorney, Sol A. Abrams, Esq. James T. Davis, Esq., Assistant United States Attorney, was present for and on behalf of the United States.

On motion of Mr. Davis, the defendants were called for arraignment. The defendants were informed of the return of the Indictment by the United States Grand Jury, and asked if they were the persons named therein, and upon their answer that they were, and that their true names were as charged, said defendants were informed of the charges against them and stated that they understood the same. Mr. Abrams waived the reading of the Indictment. On motion of Mr. Abrams and with consent of Mr. Davis, the Court ordered that the amount of bail be reduced to \$2500.00 for each defendant. Ordered case [3] continued to May 3, 1944, to plead. Further ordered that in default of

bail defendant so in default stand committed to the custody of the United States Marshal to await entry of plea and that a mittimus issue. [4]

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[Title of Court and Cause.]

PETITION TO QUASH ARRESTS AND  
FOR DISMISSAL

Comes now the above named defendant Lawrence W. Brady and Margaret Brady, hereinafter called petitioners, and respectfully presents and petitions as follows:

That on or about the 4th day of April, 1944, in the City and County of San Francisco, State of California, and within the above Division and District, petitioners were arrested by Federal Narcotic Agents without a search warrant or warrant of arrest first had and obtained, without good or probable cause, and in violation of their Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

Wherefore, your petitioners pray that an order be made quashing said arrests and dismissing petitioners.

SOL A. ABRAMS

Attorney for Petitioners

State of California,  
City and County of San Francisco—ss.

Lawrence W. Brady, being sworn, says: that he is one of the petitioners in the foregoing petition;

that he had read the foregoing petition and knows the contents thereof and the same is true of his own knowledge, except as to those matters which are therein stated upon his information and belief, and that as to those matters he believes it to be true.

LAWRENCE W. BRADY

Subscribed and sworn to before me this 28th day of April, 1944.

(Seal)

LOUIS WIENER

Notary Public in and for the City and County of San Francisco, State of California. [5]

State of California,

City and County of San Francisco—ss.

Margaret Brady, being sworn, says: that she is one of the petitioners in the foregoing petition; that she has read the foregoing petition and the contents thereof are known to her and the same is true of her own knowledge, except as to those matters which are therein stated upon her information and belief, and that as to those matters she believes it to be true.

MARGARET BRADY

Subscribed and sworn to before me this 28th day of April, 1944.

(Seal)

LOUIS WIENER

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Apr. 29, 1944. [6]

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southren Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 3rd day of May, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

ORDER DENYING MOTION TO QUASH ARREST AND FOR DISMISSAL; DEFENDANTS' PLEAS OF NOT GUILTY ENTERED

This case came on regularly this day for hearing the defendants' motion to quash arrest and for dismissal. The defendants Lawrence W. Brady and Margaret Brady were present with Sol A. Abrams, Esq., their attorney. James T. Davis, Esq., Assistant United States Attorney, was present for and on behalf of the United States. William H. Grady was sworn and testified on behalf of the United States. After hearing the arguments of Mr. Davis and Mr. Abrams, it is ordered that the motion to quash the arrest and for dismissal be and the same is hereby denied, and to which ruling of the Court an exception was noted.

The defendants were called to plead and thereupon each defendant pleaded "Not Guilty" to the Indictment filed herein, which said pleas were ordered entered.

After hearing the Attorneys, the Court ordered that this case be continued to May 9, 1944, for trial. [7]

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District Court of the United States, Northern District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday the 9th day of May, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

### MINUTES OF TRIAL

This case came on regularly this day for trial. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendants Lawrence W. Brady and Margaret Brady were present with Sol A. Abrams, Esq., their attorney. Hugh J. Boone was sworn and testified regarding the custody of the exhibits in this case. Thereupon the following persons, viz:



W. H. Purcell	John E. Gustafson
Claus H. Offerman	Joseph C. Bray
Charles A. Anderson	Wayne L. Miller
Helen F. DePaoli	Raymond W. Ring
Albert L. Hammill	William Fisher
Augustine F. Gaynor	John K. Esquin

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein. By stipulation, the Court directed the calling of one additional juror to sit with this jury, to be drawn from the same source and in the same manner and having the same qualifications as the jurors already accepted, and thereupon Ernest H. Newell, after being duly examined under [8] oath, was accepted to try the issues joined herein.

It is ordered that the further trial hereof be continued to May 18, 1944, at 10 A. M., and thereupon the jury, after being duly admonished by the Court, was excused until that time. [9]

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District Court of the United States, Northern  
District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday the 18th day of May, in the year of

our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

MINUTES OF TRIAL. ORDER DENYING  
MOTION FOR DIRECTED VERDICT OF  
ACQUITTAL

The defendants, the attorneys, and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. The roll of jurors was called and all answered to their names, including the alternate juror.

By stipulation, it is ordered that the alternate juror Ernest H. Newall be and he is hereby excused until notified to report.

On motion of Mr. Abrams, it is Ordered that all witnesses be excluded from the Court Room, with the exception of Agent Maguire.

Mr. Davis made an opening statement to the Court and Jury on behalf of the United States. William H. Grady, George E. Mallory, Thos. E. McGuire, James Ferguson and James A. Manning were each sworn and testified on behalf of the United States. Mr. Davis introduced in evidence and filed U. S. Exhibit No. 1. Mr. Abrams introduced in evidence [10] and filed certain exhibits which were marked Defendants' Exhibits, A, B, C, D, E. Thereupon the United States rested. Mr. Abrams made a motion for a directed verdict of



acquittal, which motion was ordered denied and to which ruling of the Court an exception was entered. George A. Weber and Margaret Brady were each sworn and testified on behalf of defendants.

After hearing the Attorneys, the Court ordered that the further trial of this case be continued to May 19, 1944 and the jury, after being duly admonished by the Court, was excused until that time.

[11]

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District Court of the United States, Northern  
District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday the 19th day of May, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

MINUTES OF TRIAL; DISAGREEMENT  
OF JURY

The defendants, the attorneys, and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Margaret Brady was recalled and gave further testimony. Irving Cowan was sworn and testified on behalf of the defendants and thereupon the defend-

ants rested. Thomas E. McGuire was recalled and gave further testimony in rebuttal. The United States then rested. After argument by the attorneys and the instructions of the Court to the Jury, the jury at 4:12 p. m. retired to deliberate upon their verdict. At 6:40 p. m. the jury returned into Court and requested certain testimony be read, also certain instructions. The requested testimony and instructions were read to the jury. At 6:56 p. m., the jury again retired to deliberate upon their verdict. At 7:40 p. m., the jury returned into Court and announced that they were unable to agree upon a verdict.

It is ordered that the jury be discharged from the [12] further consideration of this case and from attendance upon the Court until notified.

Ordered that this case be continued to June 6, 1944, for trial.

With the consent of Mr. Davis, the Court ordered that the defendants be released on the bonds heretofore given and filed. [13]

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District Court of the United States, Northern  
District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday the 6th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

### MINUTES OF TRIAL

This case came on regularly this day for trial. James T. Davis, Esq., and Wilbur F. Mathewson, Esq., Assistant United States Attorneys, were present for and on behalf of the United States. The defendants Lawrence W. Brady and Margaret Brady were present with Sol A. Abrams, Esq., their attorney. Thereupon the following persons, viz:

Marjorie Boyd	Roland Mack
Robert Pfaeffle	William Dawson
John Hulten	David Lord
Edgar Reed	J. Edwin Mattox
Pauline Singleton	Leonard G. Feyen
Earl Sewall	Charles E. Ayers

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein. Mr. Davis and Mr. Abrams made their respective opening statements to the Court and jury. On motion of Mr. Abrams, it is ordered that all witnesses be excluded from the Court Room, with the exception of the Agent in charge of this case. [14] R. F. Love, William H. Grady and Thos. E. McGuire were each sworn and testified on behalf of the United States. Mr. Abrams introduced in evidence and filed Defendants' Exhibits A, B, C, D, E. Mr. Davis offered a certain exhibit which was marked U. S. Exhibit No. 1 for identification.

After hearing the Attorneys, it is Ordered that the further trial of this case be continued to June 7, 1944, and the jury, after being duly admonished by the Court, was excused until that time. [15]

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District Court of the United States, Northern  
District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 7th day of June, in the year of our Lord, one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520-R

MINUTES OF TRIAL. ORDER DENYING  
MOTION FOR DIRECTED VERDICT OF  
ACQUITTAL

This case came on regularly this day for further trial. The roll of jurors was called and all answered to their names. The defendants Lawrence W. Brady and Margaret Brady, the attorneys, and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. James Ferguson and Joseph Manning were each sworn and testified on behalf of the

United States. Mr. Davis introduced in evidence and filed U. S. Exhibit No. 1. Thereupon the United States rested. Mr. Abrams made a motion for a directed verdict of acquittal, and after hearing the arguments of the attorneys, the Court ordered that said motion be denied, and an exception noted to the ruling of the Court. Irving Cowan, Lawrence Brady, Hess Moscovitz and Margaret Brady were each sworn and testified on behalf of the defendants.

After hearing the attorneys, it is ordered that the further trial of this case be continued to June 8, 1944, and [16] the jury, after being duly admonished by the Court, was excused until that time.

[17]

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District Court of the United States, Northern  
District of California, Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 8th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520

## MINUTES OF TRIAL

This case came on regularly this day for further trial. The roll of the jurors was called and all answered to their names. The defendants Lawrence W. Brady and Margaret Brady, the attorneys, and the jury impaneled herein being present as heretofore, the further trial hereof was thereupon resumed. Margaret Brady was recalled and gave further testimony on behalf of the defendants, and said defendants rested. Dr. Francis Kearney and Ellen Jones were sworn and testified on behalf of the United States. Thomas E. McGuire was recalled and gave further testimony on behalf of the United States. Mr. Davis introduced in evidence and filed U. S. Exhibits Nos. 2, 3, 4, 5, 6, 7. Thereupon the United States rested. Margaret Brady and Lawrence W. Brady were each recalled and gave further testimony on behalf of the defendants. The defendants thereupon rested.

The Court ordered that the defendants be remanded into [18] the custody of the United States Marshal. After argument by the attorneys and the instructions of the Court to the jury, the jury at 4:19 P. M., retired to deliberate upon their verdict. At 4:41 P. M., the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict, which was ordered recorded, viz:

“We, the Jury find as to the defendants at the bar as follows:



Lawrence W. Brady Guilty on the First  
Count, Guilty on the Second Count.

Margaret Brady Guilty on the First Count,  
Guilty on the Second Count.

L. G. FEYEN,  
Foreman."

The jurors upon being asked if said verdict as recorded is their verdict, each juror replied that it was. Ordered that the jurors be discharged from the further consideration of this case and from attendance upon the Court until notified.

On motion of Mr. Abrams, the Court ordered that this case be continued to June 10, 1944, for the pronouncing of judgment.

Ordered that the defendants be remanded into the custody of the United States Marshal and that mittimus issue. [19]

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[Title of District Court and Cause.]

### VERDICT

We, the Jury, find as to the defendants at the bar as follows:

Lawrence W. Brady Guilty on the first  
count. Guilty on the second count.

Margaret Brady Guilty on the first count.  
Guilty on the second count.

L. D. FAYEN,  
Foreman.

[Endorsed]: Filed June 8, 1944 at 4 o'clock and  
41 minutes P. M. C. W. Calbreath, Clerk. By J. P.  
Welsh, Deputy Clerk. [20]

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 10th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520-R.

ORDER DENYING MOTION IN ARREST OF  
JUDGMENT AND MOTION FOR NEW  
TRIAL, AND SENTENCE

This case came on regularly this day for the pronouncing of judgment. The defendants Lawrence W. Brady and Margaret Brady were present in the custody of the United States Marshal and with their attorney, Sol A. Abrams, Esq. James T. Davis, Esq., Assistant United States Attorney, was present on behalf of the United States. G. Albert Wahl, Probation Officer, was present.

The defendants were called for judgment. Mr. Abrams made a motion in arrest of judgment and a motion for new trial, which motion was ordered denied, and an exception entered to the ruling of the Court.

The defendants were called for judgment. After hearing the defendants and Officer Thos. E. Mc-



Guire, who was sworn and testified on behalf of the United States, the Court, upon its own motion, ordered that this case as to the defendant [27] Margaret Brady be and the same is hereby referred to the Probation Officer of this Court for pre-sentence investigation. Ordered that this case be and the same is hereby continued to June 29, 1944, for pronouncing of judgment as to said defendant Margaret Brady. Ordered that said defendant be remanded into the custody of the United States Marshal to await judgment.

Defendant Lawrence W. Brady having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the defendant Lawrence W. Brady, having been convicted on the verdict of the jury of guilty of the offenses charged in the Indictment, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three (3) Years and pay a fine to to the United States of America in the sum of One Thousand (\$1,000) Dollars on the First Count of the Indictment; be imprisoned for the period of Three (3) Years and pay a fine to the United States of America in the sum of One Thousand (\$1,000) Dollars on the Second Count of the Indictment, making a total fine in the sum of Two Thousand (\$2,000) Dollars; and that in default of payment of fine defendant be further imprisoned until said fine is paid or

defendant is otherwise discharged as provided by law.

Ordered that the term of imprisonment imposed on said defendant on the Second Count of the Indictment commence and run from and after the expiration of the term of imprisonment imposed on said defendant on the First Count of the Indictment.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court [28] deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

The Court recommends commitment to a U. S. Penitentiary. [29]

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District Court of the United States, Northern District of California, Southern Division

No. 28520-R

UNITED STATES

vs.

LAWRENCE W. BRADY

### JUDGMENT AND COMMITMENT

Criminal Indictment in Two Counts for Violation of Jones-Miller Act, Title 21 USC Section 174

On this 10th day of June, 1944, came the United States Attorney, and the defendant Lawrence W.

Brady appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: Violation of Title 21 USC Section 174. Count I. Defendant did, on or about April 4, 1944, in San Francisco, California, unlawfully receive and conceal approximately one ounce and 13 grains of heroin. Count II. Defendant did, on or about April 4, 1944, in San Francisco, California, unlawfully facilitate the transportation of approximately one ounce and 13 grains of heroin, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three (3) Years, and pay a fine to the United States of America in the sum of One Thousand (1,000) Dollars on the First Count of the Indictment; be imprisoned for the period of Three (3) Years, and pay a fine to the United States of America in the sum of One Thousand (1,000) Dollars on the Second Count of the Indictment, making a total fine in the sum of Two Thousand (2,000) Dollars; and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It is Further Ordered that the term of imprisonment imposed on said defendant on the Second Count of the Indictment commence and run from and after the expiration of the term of imprisonment imposed on said defendant on the First Count of the Indictment.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) MICHAEL J. ROCHE,  
United States District Judge.

Examined by:

A. J. ZIRPOLI,  
Assistant U. S. Attorney.

The Court recommends commitment to a U. S. Penitentiary.

Filed and Entered this 10th day of June, 1944.

(Signed) C. W. CALBREATH,  
Clerk.

(By) J. P. WELSH,  
Deputy Clerk.

Entered in Vol. 34 Judg. and Decrees at Page 438.

[30]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and address of Appellant: Lawrence W.

Brady, County Jail, City and County of San Francisco, State of California.

Name and address of Appellant's Attorney: Sol A. Abrams, 406 Montgomery Street, San Francisco, California.

Offense: First Count, a violation of Jones-Miller Act, 21 USC 174.

That the defendant did, on or about the 4th day of April, 1944, in the City and County of San Francisco, State of California, fraudulently and knowingly receive, conceal, and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin, in quantity particularly described as approximately one ounce and 13 grains of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Second Count, a violation of Jones-Miller Act, 21 USC 174.

That the defendant did fraudulently and knowingly facilitate the transportation of a certain quantity of a derivative and preparation of morphine, to wit, a lot of heroin in quantity and [31] particularly described as approximately one ounce and 13 grains of heroin, and the said heroin had been imported into the United States of America contrary to law, as said defendant then and there knew.

Date of Judgment: June 10, 1944.

Description of Judgment and Sentence: Defendant "guilty" upon counts one and two of said indictment as above set forth.



Sentence: Defendant Lawrence W. Brady: Three years imprisonment and a fine of \$1000 on first count; three years imprisonment and a fine of \$1000 on second count, sentences to run consecutively.

Name of Prison where now confined: County Jail of the City and County of San Francisco.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeal of the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below.

Dated: June 12, 1944.

LAWRENCE W. BRADY,

Appellant.

SOL A. ABRAMS,

Attorney for Appellant.

## GROUND OF APPEAL

### I.

That the learned trial judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of the trial.

### II.

That the evidence produced and received upon the trial of said cause was insufficient as a matter of law to justify the verdict [32] of the jury.

### III.

That the learned trial judge committed error in allowing hearsay evidence upon the trial of said cause.

## IV.

That the learned trial judge erred in denying appellant's petition made in writing to quash arrests and for dismissal on all the grounds urged in said written petition which was filed on April 29, 1944.

## V.

That the learned trial judge erred in admitting in evidence during the course of the trial a package which contained the narcotics described in the indictment, which was taken by the Federal narcotic agents unlawfully and in violation of appellant's Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

## VI.

That the learned trial judge erred in permitting testimony to be given during the course of the trial concerning the package containing the narcotics mentioned in the preceding paragraph, said seizure being in violation of appellant's Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

## VII.

That the learned trial judge erred in overruling appellant's repeated objections made during the course of the trial to the admission of such evidence referred to in paragraph V and testimony in connection therewith.

## VIII.

That the learned trial judge erred in denying appellant's motion made at the close of the case to strike out all testimony [33] of witnesses concerning the hospitalization of appellant in a sanatorium and his examination and treatment there.

## IX.

That the learned trial judge erred in admitting in evidence certain records made by witness Dr. Francis Kearney entitled "Report to Division of Narcotic Enforcement" and all testimony in connection therewith, and in refusing to strike same from the record.

## X.

That the learned trial judge erred in admitting in evidence testimony of witnesses, including Dr. Francis Kearney and Ellen Jones concerning the hospitalization of appellant in a sanatorium and his examination and treatment there, and a certain admission card of W. L. Baldwin to said sanatorium, and hospital records entitled "Doctor's Orders" in the cases of W. L. Baldwin and Mrs. Baldwin.

## XI.

That the learned trial judge erred in denying appellant's motion, made at the close of appellee's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.



## XII.

That the learned trial judge erred in denying appellant's motion for a new trial made after the verdict and before the pronouncement of sentence, upon the grounds orally stated at the time, and supplemented by written motion filed immediately thereafter.

## XIII.

That the learned trial judge erred in denying appellant's motion for arrest of judgment made after the verdict and before the pronouncement of sentence, upon the grounds orally stated at the time and supplemented by written motion filed immediately thereafter.

[Endorsed]: Filed June 12, 1944. [34]

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District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 13th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

No. 28520-R.

ORDER DENYING RELEASE OF DEFEND-  
ANT ON BOND PENDING APPEAL;  
COURT'S INSTRUCTIONS RE BILL OF  
EXCEPTIONS

Now comes Sol A. Abrams, Esq., attorney for the defendant, and moves the Court to release the defendant on bond pending the appeal of the above entitled case. After hearing the argument of Mr. Abrams and Wilbur F. Mathewson, Esq., Assistant United States Attorney, It Is Ordered that said motion for the release of the defendant on bond pending the appeal be denied. By consent, It Is Ordered that the defendant have forty (40) days within which to prepare his proposed bill of exceptions; that the United States have ten (10) days thereafter for its proposed amendments; and that said bill of exceptions be settled and approved within ten (10) days thereafter. Further ordered that this case be continued to August 15, 1944, for settlement of the bill of exceptions. [35]

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[Title of District Court and Cause.]

ADDITIONAL GROUNDS ON NOTICE OF  
APPEAL

Now comes the defendant and appellant, Lawrence W. Brady, and files these additional grounds of appeal:

XIV.

That the learned trial judge erred in admitting

in evidence the documentary and oral evidence mentioned in Grounds IX and X contained in the notice of appeal on file herein, which paragraphs are incorporated herein by reference, on the ground that they were privileged communications and records between doctor and client.

### XV.

That the learned trial judge erred in admitting in evidence the statements and admissions of appellant and defendant Margaret Brady on the ground that they were illegally obtained by the authorities who did not take appellant and said defendant Margaret Brady seasonably before a United States Commissioner under the rule of the McNabb case; and on the additional ground that the corpus delicti had not been proved by other testimony than the extrajudicial statements and admissions of appellant and said defendant Margaret Brady; [36] and on the additional ground that statements and admissions made after arrest by the respective defendants were not properly admissible against the other defendant, respectively, and on the additional ground that said statements and admissions were not part of the *res gestae*.

### XVI.

That the learned trial judge erred in denying appellant's motion made at the close of the case to strike out all testimony of witnesses concerning the hospitalization of appellant and the defendant Margaret Brady in a sanatorium and their examination and treatment there.

## XV.

That the learned trial judge erred in admitting in evidence testimony of witnesses, including Dr. Francis Kearney and Ellen Jones concerning the hospitalization of defendant Margaret Brady in a sanatorium and her examination and treatment there.

Dated: June 15, 1944.

SOL A. ABRAMS,

Attorney for Appellant.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed June 15, 1944. [37]

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[Title of District Court and Cause.]

## ASSIGNMENT OF ERRORS

Comes now Lawrence W. Brady, a defendant in the above entitled case, and in connection with his appeal in this case, assigns the following errors on which he relies in the prosecution of said appeal to the United States Circuit Court of Appeals:

1. That the verdict is contrary to the evidence adduced at the trial herein.
2. That the verdict is not supported by the evidence in the case.
3. That the evidence adduced at the trial is insufficient to justify said verdict.
4. That said verdict is contrary to law.
5. That the Court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the Court erred in admitting evidence in the course of the trial which was hearsay.

7. That the Court erred in denying defendant's petition made in writing to quash arrest and for dismissal on all the grounds urged in said written petition which was filed on April 29, 1944. [38]

8. That the Court erred in admitting in evidence during the course of the trial a package which contained the narcotics described in the indictment, which was taken by the Federal narcotic agents unlawfully and in violation of defendant's Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

9. That the Court erred in permitting testimony to be given during the course of the trial concerning the package containing the narcotics mentioned in the preceding paragraph, said seizure being in violation of defendant's Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

10. That the Court erred in overruling defendant's repeated objections made during the course of the trial to the admission of such evidence referred to in paragraph 8 and testimony in connection therewith.

11. That the Court erred in denying defendant's motion made at the close of the case to strike out all testimony of witnesses concerning the hospitalization of defendants in a sanatorium and their examination and treatment there.

12. That the Court erred in admitting in evidence certain records made by the witness Dr.



Francis Kearney entitled "Report to Division of Narcotic Enforcement" and all testimony in connection therewith, and in refusing to strike the same from the record.

13. That the Court erred in admitting in evidence testimony of witnesses, including Dr. Francis Kearney and Ellen Jones concerning the hospitalization of defendants in a sanatorium and their examination and treatment there, and a certain admission card of W. L. Baldwin to said sanatorium and hospital records entitled "Doctor's Orders" in the cases of W. L. Baldwin and Mrs. Baldwin.

14. That the Court erred in denying defendant's motion made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict [39] of guilty.

15. That the Court erred in admitting in evidence statements and admissions of defendants on the ground that they were illegally obtained by the authorities who did not take defendants seasonably before a United States Commissioner, and on the additional grounds that the corpus delicti had not been proved by testimony other than the extrajudicial statements and admissions of the defendants and that said statements and admissions were not part of the *res gestae*.

16. That the Court erred in admitting in evidence the documentary and oral evidence mentioned in paragraphs 11, 12 and 13 herein, on the

ground that such evidence related to and directly bore upon the confidential relationship of doctor and patient and as such were privileged discussions, communications and records.

Wherefore defendant prays that the judgment and conviction herein be reversed, that his arrest and the indictment be quashed and that he be dismissed.

Dated: June 21, 1944.

SOL A. ABRAMS

Attorney for Defendant.

[Endorsed]: Filed Jun. 22, 1944. C. W. Calbreath, Clerk. [40]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please make transcript of appeal to consist of following:

1. Indictment.
2. Petition to quash arrests and for dismissal.
3. Order denying petition to quash arrests and for dismissal.
4. Plea of defendant.
5. Minutes of trial.
6. Verdict.
7. Motion for new trial.
8. Motion in arrest of judgment.
9. Order denying motion for new trial and motion in arrest of judgment.



10. Judgment.
11. Notice of Appeal.
12. Assignment of errors.
13. Bill of exceptions.
14. Order settling bill of exceptions.
15. This praecipe.

SOL A. ABRAMS

Attorney for Defendant

[Endorsed]: Filed Jun. 22, 1944. [41]

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[Title of District Court and Cause.]

### BILL OF EXCEPTIONS

Be it remembered, that heretofore, to wit, on the 3rd day of May, A. D. 1944, before the Honorable Michael J. Roche, the Petition to Quash Arrest, and for Dismissal came on for hearing, and that upon said hearing of said petition Mr. James T. Davis appeared as counsel for the plaintiff; and Mr. Sol A. Abrams appeared as counsel for the defendants, and the following proceedings were had:

### TESTIMONY OF WILLIAM H. GRADY

For the United States:

William H. Grady, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

I am agent of the Federal Bureau of Narcotics. I know the defendants in this case, Lawrence W. Brady and Margaret Brady. On the evening of

(Testimony of William H. Grady.)

April 4th Agent McGuire, Agent Ferguson and myself followed the two defendants in this case in their automobile into the public garage located at 840 Sutter street. I was in a Government automobile. As they drove into the garage about 70 feet their car stopped and I observed Mrs. Brady leave [42] the car and start walking toward the door of the garage. We drove in very slowly, and as she passed the car she looked directly into the car, and I was keeping her under observation, and as she got to the end of the car she dropped a package to the floor of the garage, and I walked over and picked the package up. It appeared to be narcotics to me. So the defendants were placed under arrest.

#### Cross Examination

The other officers and I were in a car that followed the car in which Mr. and Mrs. Brady were riding. Their car entered the public garage, and after being driven about 70 feet along the driveway from the front door of the garage their car came to a stop. Our car was at the curb just about *the* enter the garage when I observed the Brady car come to a stop. I observed Mrs. Brady get out of the right-hand side door of the Brady car and walk toward the front door of the garage. Our car then was driven to within ten or fifteen feet of the rear of the Brady car, and then came to a stop. As we stopped, Mrs. Brady walked past our car about four feet from the right-hand side. I was

(Testimony of William H. Grady.)

seated in the front seat on the right-hand side. I kept her under observation continuously from the time she left her car and as she passed our car I turned and continued to keep her under observation. When she was about opposite the rear wheel on the right-hand side of our car, she dropped the package, which I walked over and picked up. It was a brown envelope about two inches wide and perhaps four and a half inches long. The envelope was wrapped in white Kleenex paper. As soon as I picked the package up I said, "Just a minute, I want to talk to you about this." I called to Agent McGuire and said that I had it. I then placed Mrs. Brady under arrest. Mr. Brady did not come back with Mrs. Brady; he stayed up by his car. I be- [43] lieve Agent McGuire placed him under arrest.

"Q. All you saw when you picked up that package was just a little package in white tissue paper, or white Kleenex, isn't that right? A. Yes.

Q. Were there any marks on it, or anything?

A. No.

Q. No writings or marks on the package, at all?

A. No.

Q. That is all you saw, just that package in that condition? A. Yes.

Q. You did not know what was inside of the package at that time, did you?

A. Not until I looked.

(Testimony of William H. Grady.)

Q. Not until you opened it up and looked inside, isn't that right?      A. Yes.

The Court: Is that all from this witness?

Mr. Abrams: Yes.

Mr. Davis: Yes.

The Court: The motion will be denied.

Mr. Abrams: Exception."

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Be it further remember, that heretofore, to wit, on the 3rd day of May, A. D. 1944, before the Honorable Michael J. Roche and a jury, the above entitled cause came on for trial, and that upon said trial of said cause, Messrs. James T. Davis and Wilbur F. Mathewson appearing as counsel for the plaintiff; and Mr. Sol A. Abrams appearing as counsel for the defendants, Lawrence W. Brady and Margaret Brady, a trial was had in which the jury was unable to reach a verdict, and was subsequently discharged by the Honorable Michael J. Roche, and the case ordered retried.

Be it further remembered, that heretofore, to wit on the 6th day of June, A. D. 1944, before the Honorable Michael J. Roche and a jury, the above entitled cause came on for trial, [44] and that upon said trial of said cause, Messrs. James T. Davis and Wilbur F. Mathewson appearing as counsel for the plaintiff; and Mr. Sol A. Abrams appearing as counsel for the defendants, Lawrence W. Brady and Margaret Brady, the following proceedings were had.

## TESTIMONY OF R. F. LOVE

For the United States

R. F. Love, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is R. F. Love, and I am by occupation a chemist employed by the United States Bureau of Internal Revenue, and have been so employed for the last twenty-six years.

“Mr. Davis: Mr. Clerk, may I have the heroin in this case?

Mr. Abrams: Let’s leave the exhibits here and let them all be marked for identification right now and get it over with.

Mr. Davis: Very well.”

Whereupon a brown paper envelope wrapped in white Kleenex paper was marked U. S. Exhibit 1 For Identification, and five photographs were marked Defendants’ Exhibits A, B, C, D, and E For Identification.

On the 5th day of April, 1944 Narcotic Agent Ferguson delivered to me this brown paper envelope wrapped in white Kleenex paper, U. S. Exhibit 1 For Identification. From a chemical analysis of the contents of said envelope I have determined that the substance is heroin. The contents of U. S. Exhibit 1 For Identification have been in my custody from the time the envelope was delivered to me until the time I produced it here in court on the first trial of this case.

(No cross-examination.) [45]



## TESTIMONY OF WILLIAM H. GRADY

For the United States.

William H. Grady, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is William H. Grady. I am an agent of the Federal Bureau of Narcotics. I know the two defendants in this case, Margaret and Lawrence Brady. I had known the defendants prior to the 4th day of April, and my occupation was known to them. About six o'clock in the evening on the 4th day of April, I observed the defendant Lawrence Brady drive in his Cadillac automobile into the Butterick Garage, located at 840 Sutter street, San Francisco. I was seated in a Government automobile with Agents Ferguson and McGuire. The automobile in which I was seated was parked on Sutter street near the intersection of Jones street, about half a block from the Butterick Garage. I observed the defendant Lawrence Brady leave the garage and walk across the street to the Commodore Hotel, where he disappeared from my view. In about fifteen minutes he emerged from the hotel, accompanied by his wife, Margaret Brady. They crossed the street and entered the garage. In a few moments I observed Brady drive his Cadillac car out of the garage with Mrs. Brady sitting in the front seat beside him. We in the Government car followed the Brady car to Van' Ness Avenue and Lombard street, at which point Mrs. Brady left the car and remained standing on the corner while

(Testimony of William H. Grady.)

Brady drove on out of my sight. Mrs. Brady did not meet or talk to anyone while she was standing on the corner of Van Ness Avenue and Lombard street. About five minutes later the defendant, Larry Brady, drove back in his automobile and stopped. The defendant Margaret Brady entered the automobile and the Bradys then drove back to the garage at 840 Sutter street, followed by us in our car. Their car was [46] under our observation during the entire trip from Van Ness Avenue and Lombard street to the garage at 840 Sutter street. Brady made a left-hand turn and entered the garage. We made a left-hand turn and paused at the curb line just at the entrance of the garage, facing directly into the garage, as their car stopped about 70 feet from the front entrance of the garage, and facing toward the rear of the garage. Their car was in the main runway of the garage. At that time I saw the front door on the right-hand side open and Mrs. Brady starting to get out. We then drove into the garage and our car stopped a distance of approximately ten feet behind the rear bumper of the Brady car. At the time our car stopped I got out. As I got out of our car Mrs. Brady was standing approximately abreast of the right rear wheel of the Government automobile. She had been under my observation continuously from the time she left her car and proceeded toward the entrance of the garage, until she stopped at a point opposite the right rear wheel of the Government car. When I got out of the car her back was



(Testimony of William H. Grady.)

toward me. I observed a package drop from the folds of her clothing to the cement floor in the garage. When I first observed the package it was in the process of falling.

“About what distance was it from her body in relation to the package falling?

A. Well, it was as though it had fallen directly from the folds of her coat; I would say about six inches from her body, from her legs, as it fell.

Q. Was it falling in a straight line or in an arc?

A. In a straight line.

Q. Falling down in a straight line?

A. Yes, sir.”

I picked up the package. It was a brown envelope, about two inches wide and about four and a half inches long. It had two pieces of Kleenex-like material around it. U. S. Exhibit [47] 1 For Identification is the package that I am referring to. It has my initials on it. At the time I picked the package up I immediately opened it and looked at the contents.

“Q. From your experience as a narcotics officer, would you say, in your opinion, what the package contained?

Mr. Abrams: I will object to that as calling for an opinion and conclusion of the witness.

The Court: If he knows he may answer.

Mr. Abrams: Exception.

The Witness: It was my belief that it was heroin.”

(Testimony of William H. Grady.)

I asked Mrs. Brady what was in the package and where she had gotten it. She denied knowing anything about where it came from, or what it was, or anything about it.

“Did you make any other remarks at that time?”

A. Yes, sir. I then called out to the other agents that I, I said, ‘I have it.’

Q. If you know, where were the other agents at this time?

A. I don’t really know where the other agents were at this time.

Q. Did you or did you not place Mrs. Brady under arrest at that time?      A. Yes, sir.

Q. Right there at the spot where you picked up the package?

A. Yes, sir, after I had looked at the contents.

Q. Did you then observe Mr. Brady in the vicinity?

A. Shortly thereafter Agents Ferguson and McGuire came over with Larry Brady to the position in which Mrs. Brady and I were standing.”

There was considerable conversation between Agent McGuire and the defendant Brady, but I don’t recall what that conversation was. We then took the defendants to their room in the [48] Commodore Hotel, arriving in the hotel room about 7:00 p. m. The defendant Larry Brady was searched in his hotel room but Mrs. Brady was not searched. No narcotics were found on the defendant Larry Brady or anywhere else in the room, or among the possessions of the defendants.

(Testimony of William H. Grady.)

“Q. Did you, or anyone else in your presence, have a conversation with the defendants, or either of them, in the hotel room?

A. Yes, sir. As I was searching the hotel room Agent McGuire was conversing with the defendant Larry Brady, and Brady stated——

Mr. Abrams: We will object to the conversation taking place in the hotel room as not part of the *res gestae*; incompetent, irrelevant, immaterial.

The Court: Overruled.

Mr. Abrams: Exception.”

The defendant Lawrence Brady stated that he had purchased the narcotics for \$300 that evening and that they belonged to him. Brady stated he would like to talk to District Supervisor Manning, of the Bureau of Narcotics. Agent McGuire attempted to locate Mr. Manning by telephoning to his home. He was unsuccessful. We left the hotel room about eight o'clock and went to the District Office of the Federal Bureau of Narcotics at 68 Post street, arriving there about 8:30 or 9:00 o'clock. We then waited for the arrival of Mr. Manning.

“Q. Did you have any further conversation, or anyone else have conversations in your presence with the defendants there at the Narcotic Office before Major Manning arrived, if he did?

A. Yes, sir.

Q. What were those conversations, if they pertained to this [49] case?

Mr. Abrams: I object to that as incompetent,

(Testimony of William H. Grady.)

irrelevant, and immaterial, not part of the res gestae, a violation of the constitutional rights of the defendants.

The Court: Overruled.

Mr. Abrams: Exception."

Before the arrival of Mr. Manning the conversation was of a general nature. This particular case was not discussed in my presence. Mr. Manning arrived at approximately 11:00 o'clock. He conversed with the defendants separately. He first conversed with Larry Brady in the presence of Agent McGuire and myself.

"Q. What, if anything, did Major Manning say to Mr. Brady, or did Mr. Brady say to him at that time, during that conversation?

Mr. Abrams: I object to that as incompetent, irrelevant, and immaterial, not part of the res gestae, a violation of the constitutional rights of the defendants.

The Court: Overruled.

Mr. Abrams: Exception."

At that time the defendant Brady repeated his previous statement that he had purchased the narcotics for \$300; that he had purchased them from some man in the North Beach District of San Francisco; that he was willing to make some type of a deal with the District Supervisor if neither he nor his wife were prosecuted, and with the further understanding that his car would be returned to him. I did not hear all of the conversation, as I was in and out of the office, but I heard the main

(Testimony of William H. Grady.)

part of it. He also described to Major Manning driving his car from 840 Sutter street to Van Ness and Lombard, where his wife left the automobile and he drove on. Major Manning then questioned Mrs. Brady in the presence of Agent McGuire and myself. [50]

“Q. What, if anything, did Major Manning say to Mrs. Brady or Mrs. Brady to him concerning this transaction?

Mr. Abrams: I object to that as incompetent, irrelevant, and immaterial, not part of the res gestae, a violation of the constitutional rights of the defendants.

The Court: Overruled.

Mr. Abrams: Exception.”

At that time Mrs. Brady stated that the first time she had seen the package was when it was in the front seat of the Brady automobile, and that she had picked the package up, intending to take it to her hotel room. Upon picking up the package from the floor of the garage I turned it over to Agent McGuire when we reached the hotel room.

### Cross Examination

In company with Agent McGuire I met the defendants Lawrence and Margaret Brady in the Sir Francis Drake Hotel, San Francisco, in January, 1943.

“Mr. Abrams: Q. Was it a fact at that time you had searched the room, you and Mr. McGuire had searched the room occupied by the defendants



(Testimony of William H. Grady.)

in that hotel, you had searched the room for narcotics and found no narcotics?

Mr. Davis: I object to that question as having no bearing on the issues of this case.

The Court: This was a year before?

Mr. Abrams: Yes, your Honor.

The Court: Objection sustained.

Mr. Abrams: Exception."

I had seen Brady's car in the garage at 840 Sutter street before April 4th. I believe it was a 1941 Cadillac sedan. Brady's car was seized on the evening of April 4th in the garage at the time of his arrest. As far as I know, it is still in the custody [51] of the United States Government. On the trip to Van Ness Avenue and Lombard I estimate that the car of Brady and our car were traveling at approximately twenty miles an hour, both going and coming. Mrs. Brady remained on the corner at Lombard and Van Ness Avenue for about five minutes, and her husband then returned and picked her up. It took us about seven minutes to drive from the garage to Van Ness and Lombard, and approximately the same time on the return trip. I would estimate the entire trip, including the time Mrs. Brady was standing on the corner of Lombard and Van Ness Avenue, took about nineteen or twenty minutes. I estimate we got back to the garage about fifteen minutes before seven o'clock on the evening of April 4th, and that we got to the hotel at about seven o'clock with the two defendants.

(Testimony of William H. Grady.)

“Q. When did you place the defendants under arrest?

A. I placed the defendant Mrs. Brady under arrest immediately after I had examined the package.

Q. That was after you arrived at the garage?

A. Yes, sir.

Q. In other words, you placed her under arrest just about the time you got out of the car as you arrived at the garage; is that right?

A. After I had gotten out of the car and picked up the package and examined the package.

Q. That only took a minute or so?

A. Yes, sir.

Q. Then you placed her under arrest?

A. Yes.

Q. At the same time Brady was being placed under arrest at the other end of the garage, isn't that true?

A. I don't know what was happening at the other end of the garage.

Q. As a matter of fact, it was about seven o'clock that you got to the garage, wasn't it? [52]

A. No, sir. I have testified that as far as I knew it was shortly before seven o'clock.

Q. When you say 'shortly before seven o'clock,' you mean within a minute or two of seven o'clock, don't you?      A. No, sir.

Q. Not a quarter to seven?



(Testimony of William H. Grady.)

A. About quarter, that is the way I have testified, and that is the way it was.

\* \* \* \* \*

Q. Do you recall my asking you on the last trial of this case these questions and you giving these answers:

‘Q. You arrested the defendants at approximately 7 p. m., isn’t that right? A. Yes, sir.

Q. On this day? A. Yes, sir.

Q. April 4th? A. Yes, sir.’

Do you recall being asked those questions and giving those answers? A. Yes, sir.

Q. So that you did arrest—that is true, is it, what I have just read is correct? A. Yes, sir.

Q. Is it the truth? A. Yes, sir.

Q. You arrested the defendants when you got back to the hotel immediately on getting out of the car at about 7:00 o’clock, that would be the time when you got back to the garage, wouldn’t it, and not quarter to seven?

A. The question that was asked in this was, ‘It was approximately 7:00 p. m.’

Q. Do you consider approximately quarter to seven and seven o’clock the same?

A. It would depend on the circumstances.”

I do not recall, and I don’t think I did discuss Mr. McGuire’s testimony and my own testimony since the last trial of this case. I have read a transcript of my own testimony given at [53] the last trial, but I did not read Mr. McGuire’s testimony or discuss his testimony at all. I was not in the court-

(Testimony of William H. Grady.)

room during the last trial because I was an excluded witness.

“Q. Did he (McGuire) tell you there had been some questioning of him during the last trial as to how long it took to drive out to Van Ness Avenue and back, and that there were some inconsistencies between the testimony of you various agents with respect to the speed which you traveled out there, about how long it took; did you have any conversation like that with Mr. McGuire at all since the trial of this case?

Mr. Davis: I object to the question on the ground the proper foundation for impeachment has not been laid. The record has not shown in what way the testimony given at the previous trial differs from the testimony of the witness this morning.

Mr. Abrams: He said seven o'clock. He said——

The Court: Just a moment. Objection sustained. Let it go out. Let the jury disregard it for any purpose.

Mr. Abrams: Your Honor, I——

The Court: The Court has ruled.

Mr. Abrams: May I show it to your Honor?

The Court: The Court has ruled.

Mr. Abrams: Exception.”

The witness testified further:

“Mr. Abrams: Q. Page 25, lines 22 and 23.

Mr. Davis: What lines, Mr. Abrams?

Mr. Abrams: Lines 22 and 23. Would you mind looking at lines 22 and 23? If you want to glance at the rest of that page it may refresh you on the

(Testimony of William H. Grady.)

whole thing, Mr. Grady. Mr. Grady, do you recall during the last trial of this case my asking you, among other questions, this question, and you [54] giving this answer:

‘Was it a clear night?

A. It was daylight yet; it was 7:00 o’clock.’

A. Yes.

Q. Do you recall that? A. Yes.

Q. Is that correct?

Mr. Davis: Just a minute. I object to this because it has not been placed—we don’t know what you are talking about.

Mr. Abrams: Well, I guess we better go back.

Mr. Davis: Go back and find out where we are.

Mr. Abrams: Q. Let’s start on line 28, page 24. Let’s start there and go where you read before.

A. Yes.

Q. Do you recall, Mr. Grady, in the last trial of this case, these questions, and you giving these answers:

‘Q. As the Brady car made the turn into the garage and proceeded in the garage, did your car follow right in behind?

A. No, sir. We stopped at the curb long enough to let it go down to where they stopped the car.

Q. You stopped at the curb line? A. Yes.

Q. How was your car facing at that moment?

A. We were approximately faced into the garage.

Q. Were you faced in toward the garage?

A. Yes.

(Testimony of William H. Grady.)

Q. In other words, you were keeping your direction, or movement, right directly into the garage?

A. Yes.

Q. The only thing is, you were paused or stopped as you reached the curb line before you entered the garage; is that it?      A. Yes.

Q. You were sitting in the front seat?

A. Yes.

Q. Was it a sedan?

A. A club coupe or sedanette. It has one of these what I would term a little seat in [55] the back.

Q. One door on each side?      A. Yes.

Q. A club seat in the back?      A. Yes.

Q. Who was driving the car?

A. Agent McGuire.

Q. Mr. McGuire was driving the car. You were sitting in the front seat with him?      A. Yes.

Q. The driver's seat was on the left and you sat on the right?      A. Yes.

Q. Mr. Ferguson was in back in the club seat?

A. Yes.

Q. Were the windows of your car open?

A. I don't remember.

Q. Was it a clear night?

A. It was daylight yet, it was seven o'clock.'

Do you recall those questions and answers?

A. Yes.

Q. Those were your answers?      A. Yes.

Q. They were correct?      A. Yes, sir.

Q. That is the correct situation?

(Testimony of William H. Grady.)

Mr. Davis: I object to this line of questioning. There has been no proper foundation laid for impeachment, because it has not been shown in what way the witness' present testimony differs from the testimony previously given.

Mr. Abrams: The witness testified, your Honor, it was quarter to seven when he got to the garage.

Mr. Davis: He said approximately.

Mr. Abrams: He said approximately quarter to seven when he got to the garage. Now I am showing from his testimony in the previous case where they testified several times, not once, that it was seven o'clock, and a matter of fifteen minutes, your Honor, is very important in this case. Your Honor recalls in the last trial Mr. McGuire took the stand on rebuttal and got it down to twenty minutes, the trip out [56] there, in order to rebut the testimony of one of our chief witnesses in this case, by attempting to show that he had observed him every moment he was at the hotel there.

The Court: Let the question and answer stand. Proceed."

At the time I saw Mrs. Brady get out of her car our car had paused at the curb at the entrance of the garage and our car then proceeded into the garage.

"Mr. Abrams: I think we might as well put these pictures in evidence, Mr. Davis. We both agree on them.

Mr. Davis: That is agreeable.

Mr. Abrams: So the jury can look at them, and

(Testimony of William H. Grady.)

we can refer to them, if the Court please. I will offer them in evidence.

The Court: Admitted and marked.

(Photographs in and about the garage were marked Defendants' Exhibits A, B, C, D, and E in evidence.)

Mr. Abrams: May the jury see these, your Honor? May I pass these pictures to the jury for just a moment?

Mr. Davis: Just a moment, I forgot something. We will stipulate, however, these distances on the back are not to be——

Mr. Abrams: That is correct. We ask the jury not to look at the back of the pictures.

Mr. Davis: Yes.

Mr. Abrams: In other words, the jurors are not to look at the back of the pictures, just the pictures, themselves, so they will get an idea of this garage and the front entrance, and looking into it from the outside, and that is the picture from the inside of the garage."

My car was stopped and I was out of it, standing by the door on the right-hand side of the car when I saw the package drop. [57] At that time Mrs. Brady was standing opposite the right rear wheel of my car. I had been sitting in the car when Mrs. Brady passed the right front door but I had gotten out by the time I saw the package falling. I had been watching her every second of the time and, as I recall, her hands were both in front of her.



(Testimony of William H. Grady.)

She had a purse in her hands and they were joined together. I did not see the package in her hands. The first I saw of the package was as it was being dropped, and at that moment all I could see of her was her back. The package dropped down from the side of her clothing, but it fell clear of her clothing. At that moment her hands were in the same position in front of her. The position of her arms did not change. I picked the package up from a position of between four and six inches from her feet on her left side as she was facing the entrance of the garage. I am sure I was out of the car when I first saw the package. I was standing with the door open, between the fender and the door of the car. I had just left the car at the time the package was dropping.

“Mr. Abrams: This is the motion, page 6, Mr. Davis. Starting to read at line 2 and going down, say, to line 10——

Mr. Davis: What lines, Counsel?

Mr. Abrams: Lines 2 to 10.

Q. Do you remember my asking you these questions at that time, and you giving these answers:

‘Q. All you could see was some white object, isn’t that true, that she had dropped?’

A. Well, yes, I could see the package there, and I picked it up.

Q. What was the first thing you did? You immediately got out of your car, I presume?

A. Yes.

Q. When you saw her drop the package?



(Testimony of William H. Grady.)

A. Yes.

Q. What was the first thing you did when you got out of the car?

A. Picked the package up. [58]

Q. And examined it? A. Yes.'

Do you remember being asked those questions and you giving those answers? A. Yes.

Q. Which is correct, these answers here, namely, that you were in the car and got out as soon as you saw the package drop, or your testimony that you have just given now, just previously given here, that you were out of the car and that Mrs. Brady was at the rear of the car when you saw that package drop?

Mr. Davis: Same objection, your Honor. The proper foundation is not laid, because the counsel has not yet shown in what means or what manner the testimony of the witness at this time differs from the testimony previously given. Counsel is assuming something here——

Mr. Abrams: A schoolboy could see that, your Honor.

The Court: The jury heard the testimony as you read it. Let them decide.

Mr. Abrams: I am asking the witness which is correct, were you in the car or out of the car when you saw the package drop?

A. I was out of the car, as I testified to previously.

Q. As you testified to a minute ago?

A. Yes, on several occasions.

(Testimony of William H. Grady.)

Q. But not as you testified on this occasion. As you said a moment ago, it is true that Mrs. Brady was under your observation at every moment there while you were in the garage, from the moment you saw her get out and start walking to the front, isn't that right?

A. Until the time she was under arrest, do you mean?

Q. Yes; you had her under constant observation?

A. Yes, sir.

Q. You were watching her at all times?

A. Yes, sir.

Q. You didn't watch anything else around there?

[59]

Mr. Davis: I object to that, your Honor.

Mr. Abrams: I withdraw the question.

Q. Were you watching her entirely or were you also watching other things around the garage, observing other things there at the same time, or was your entire observation centered on her?

A. I don't quite understand your question, Counsel.

Q. Well, here is what I am driving at: It is true you had her under close observation at that particular time?

A. Yes, sir.

Q. You were watching her constantly?

A. Yes, sir.

Q. You weren't observing anything else that was taking place in the garage, you were concentrating your observation upon Mrs. Brady; isn't that true?

(Testimony of William H. Grady.)

Mr. Davis: I object to that on the ground the question is complex and compound.

The Court: Read the question.

(Question read.)

The Court: At that particular time.

The Witness: At the time she was walking from the car to the—in making observations it is possible to see the—you see a field, you don't—it is not like you would close your eyes and you would look through the end of a funnel and just see one certain object or spot; you would see a field, as you probably well know, Counsel.

Mr. Abrams: Well, you weren't observing the floor at that time, were you, when you were observing her you weren't—

Mr. Davis: I object to this line of questioning.

The Court: Objection sustained.

Mr. Abrams: Q. You did not see anything on the floor of the garage at the time—exception to that last ruling. You did not see anything on the floor at that time, did you? [60]

Mr. Davis: I object to that as being—

Mr. Abrams: Your Honor, we have a right to see what this man saw. He says he saw a package being dropped. I am asking a very pertinent question.

Q. Were you looking at the floor? Did you see anything on the floor?

Mr. Davis: The question is too general.

The Court: When?

Mr. Abrams: At that moment.

(Testimony of William H. Grady.)

The Court: Which moment?

Mr. Abrams: That he picked up the package.

The Court: At that moment. You may answer.

Mr. Abrams: Within a few seconds.

Mr. Davis: My objection merely goes to the fact the questions are too general. The man testified he saw a package; there may have been a——

Mr. Abrams: We are not bound to accept those answers.

The Court: The Court has ruled. Read the question.

(Question read by the reporter.)

The Court: At what time?

Mr. Abrams: Q. At the time Mrs. Brady was passing your car up until the time you saw something drop on the floor.

A. The field in the area in which Mrs. Brady was walking was under my observation, as well as her person.

Q. In other words, you were observing the floor and her at the same time, is that right?

A. I couldn't hardly observe her without the floor, I would have to see a certain amount of the floor.

Q. Were you particularly looking for anything on the floor at the time?

A. Well, no, I was not particularly looking [61] for anything on the floor, but I would probably observe it if it were there.

(Testimony of William H. Grady.)

Q. On the contrary, you were watching every movement to see what she would do; isn't that true?

Mr. Davis: I object to that. It has been asked and answered. He was observing her and the floor at the same time.

The Court: There is no necessity for repeatedly going over the testimony. Now, conclude with the witness.

Mr. Abrams: May I have an answer to the question, if the Court please?

The Court: The Court has ruled. Proceed.

The witness testified further: As Mrs. Brady passed my car she looked at me, directly in the eyes. She did not make any signs or gestures of any kind, but her expression changed considerably.

“Mr. Abrams: Q. Do you remember at the last trial my asking you the following questions and you giving these answers—rather, Mr. Davis asking you the questions and you giving these answers:

‘Q. Tell me, describe exactly what you saw concerning this package you say you saw her drop. Tell us what you saw?’

A. Mrs. Brady was between me and the door of the garage. She had, as I testified, walked past me as I was getting out of the car, but I was keeping her under very close observation, and I observed the package drop to the floor, and Mrs. Brady then turned around and faced me. I walked over to recover the package.’

Do you recall that?

A. Yes, sir.

(Testimony of William H. Grady.)

Q. That was your answer?

A. Yes, sir.

Mr. Davis: If the Court please, I object to this. Ob- [62] viously, there is no proper foundation laid for impeachment here. Mr. Abrams is evidently saying she then turned around and faced him, which is an entirely different picture. We are now talking whether when she walked past the car she turned.

Mr. Abrams: That's right.

Mr. Davis: She certainly may have, and probably did, as the witness testified, turn later after she dropped the package. That is what this testimony applies to.

Mr. Abrams: It definitely says she walked past him and then turned around after he picked up the package.

The Court: All right. Where is the conflict in the testimony?

Mr. Abrams: He just testified that—I will leave it to the jury.

The Court: Well, if you leave it to the jury, let the jury decide.

Mr. Abrams: Very well, and I will argue the matter later.

The Court: Proceed.

Mr. Abrams: We will leave it to the jury. I am satisfied to leave it to the jury. I will also refer to page 34 of the transcript, lines 15—let's start in at line 7 to get the thought of it, down through line 18.



(Testimony of William H. Grady.)

The Witness: 7, did you say?

Q. Yes; 7 to 18, just to get the thought of it in there. Do you remember on the previous trial of this case I asked you these questions and you giving these answers:

‘Q. You got out of the car?      A. Yes.

Q. You jumped out as fast as you could get out of it?

A. Well, I suppose I got out in a hurry. I don’t know [63] that you would say I jumped out.

Q. You got out in a hurry and grabbed ahold of her, didn’t you?      A. No.

Q. You did not get out hurriedly?

A. No. Well, I mean I jumped out, but I didn’t jump out and grab ahold of her.

Q. When you did jump out you did grab ahold of her?      A. No.

Q. What did she do, keep on walking?

A. Yes.

Q. Did you stop her?

A. She walked a step and then dropped the package.’

Is that correct?      A. Yes, sir.

Q. Do you remember giving those answers?

A. Yes, sir.

Q. To those questions?      A. Yes, sir.

Mr. Davis: Well, just a minute. Your Honor, I am going to ask that that last question, the line of questioning be stricken from the record unless there is a foundation laid for impeachment.

(Testimony of William H. Grady.)

Mr. Abrams: Same thing; nothing about stopping in the meantime and turning and looking into the car in the garage.

Mr. Davis: Just a minute.

The Court: Let the record stand."

The Witness testified further: I did not know what was in the package until I looked into it. After picking up the package and examining its contents I had a short conversation with Mrs. Brady and then I made the exclamation to Agents McGuire and Ferguson that, "I have it." That was maybe one minute, two minutes, maybe three minutes after I picked the package up. I don't know where Agents McGuire and Ferguson were at that moment.

"Q. At any time in the garage, there, did Mr. Ferguson [64] say anything to you about seeing the package drop?

A. I don't recall of him having—I know he did afterward.

Q. After you left the garage? A. After.

Q. But not in the garage? A. No.

Q. Nor in the car? A. No."

The witness testified further. At the time I got out of the car and picked up the package I did not take hold of Mrs. Brady. She did not say, 'Don't hold me so tight.' I saw the package drop from Mrs. Brady's clothing but I did not see her actually drop it."

Mr. Abrams: Page 7 of the transcript (transcript of the first trial).

(Testimony of William H. Grady.)

Mr. Davis: Which line?

Mr. Abrams: Beginning line 7 through line 11, do you remember Mr. Davis asking you at the first trial of this case these questions and you giving these answers:

“Q. In other words, she hadn’t walked by the car, she had walked by your position in the car?

A. By my position but not by the car, that’s correct.

At that time we observed her drop a package to the sidewalk, or to the floor of the garage, the cement floor of the garage.’

Do you remember being asked those questions and giving those answers?

Mr. Davis: I make the same objection. There is no ground for impeachment here. There is absolutely no conflict in the testimony.

The Court: Proceed.

Mr. Abrams: All right. The jury can take that into consideration.

Mr. Davis: Well, that’s all right, providing you are [65] waiving your attempt to impeach the witness.

Mr. Abrams: You will have your opportunity to argue about that.

Mr. Davis: I don’t mind as long as you leave it up to them and waive your right to impeach the witness, but I don’t want you attempting to impeach the witness—

The Court: Is that all from this witness?

(Testimony of William H. Grady.)

Mr. Abrams: No, your Honor. Will your Honor bear with me for a moment?"

The witness testified further: Upon leaving the garage with Mr. and Mrs. Brady we went to their room in the Commodore Hotel. I do not recall any conversation wherein Mr. Brady asked that a charge, if any was to be placed, be placed against him and not Mrs. Brady. I do not recall any conversation about letting the car go. The first time I heard the mention of \$300 having been paid for the heroin was in the hotel room, when Mr. Brady said he had just paid \$300 for the package of narcotics. I did not hear Mr. McGuire mention that Mr. Brady must have paid \$300 for the narcotics.

"Mr. Abrams: Q. Didn't either you or Mr. McGuire tell Mr. Brady that after all, you didn't have authority to let his wife go and to prefer the charge only against him, but you would have to take it up with Mr. Manning, your chief, and that was the reason why you went down to your office and waited there until 11:30 o'clock until Mr. Manning came?"

A. That is a part of the discussion at the hotel room, and that, I believe, was had in the lavatory while I was out searching the room."

The witness testified further: I did not make any notes of any conversation had with the defendants. What I have tes- [66] tified to regarding conversations is just what I recall out of my mind that I remember that I had. I do not believe the defendants were asked to make a written state-

(Testimony of William H. Grady.)

ment. On April 5th I made a fingerprint examination of the brown envelope, U. S. Exhibit 1 For Identification. I did not find the fingerprints of the defendants on the envelope. Together with the other officers, I searched the hotel room, the automobile, and the defendant Brady, and we did not find any envelopes similar to U. S. Exhibit 1 For Identification, or scales for weighing narcotics, or needles for injections.

“Q. One more question. In the garage when Mr. Brady was brought up from the rear of the garage by Mr. Ferguson and Mr. McGuire to where you were, you heard Mr. Brady also deny any knowledge of that package; isn't that true?

A. Yes, sir.

Q. He said he knew nothing about that package, never saw it before? A. Yes, sir.

Mr. Abrams: I think that is all.

Mr. Davis: That is all.” [67]

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## TESTIMONY OF THOMAS E. MCGUIRE

For the United States.

Thomas E. McGuire, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Thomas E. McGuire, and I am now and have been for the last sixteen years a Federal narcotics agent. I was one of the agents who



(Testimony of Thomas E. McGuire.)

worked on this case. I knew the two defendants prior to the 4th day of April 1944, and they knew me and knew what my occupation was. On April 4 I saw the defendant Mr. Brady enter the garage at 840 Sutter Street at approximately 6 or 6:15 at night. He was in a Cadillac automobile when he drove into the garage. I was parked in the Government automobile near the corner of Sutter and Jones Streets. Mr. Brady immediately left the garage and entered the Commodore Hotel across the street. About ten minutes later Mr. and Mrs. Brady emerged from the Commodore Hotel, crossed the street, and entered the garage. I then saw the Cadillac automobile, with Mr. Brady driving and Mrs. Brady seated in the front seat to his right, leave the garage and drive west on Sutter Street. We followed the Brady car to Van Ness Avenue and Lombard, where I observed Mrs. Brady leave the automobile and stand on said corner, and Mr. Brady continued driving north on Van Ness Avenue. I kept Mrs. Brady under constant observation during the time she was standing on the corner. She spoke to no one and did nothing but stand on the corner. About five minutes after having left Mrs. Brady on the corner, Mr. Brady reappeared in the same Cadillac automobile, stopped, picked up Mrs. Brady and drove to the same garage at 840 Sutter Street. I followed in the Government automobile, keeping the Brady automobile under observation during the entire trip back to the garage at 840 Sutter Street. The Brady car



(Testimony of Thomas E. McGuire.)

is a sport model Cadillac painted a two-tone color, gray and light gray. [68] I judge the entire trip from the garage to Van Ness and Lombard, and the time Brady was out of my sight, and the trip back to the garage consumed about twenty minutes. It was about 10 minutes to 7 or quarter to 7 when we returned to the garage at 840 Sutter Street.

I was driving the Government car, and when Brady made a left-hand turn from Sutter Street into the garage I was not more than a quarter of a block behind his car. I slowed down at the time and allowed him to continue on into the garage before we turned. We made a left-hand turn from Sutter Street into the garage at almost the same time that they were inside the building line, so the car was practically observed all the way into the garage while it was moving. Brady's car moved approximately 70 or 75 feet inside the garage while we made the left-hand turn to continue into the garage. While Brady's car made 70 feet inside the building line we made approximately 25 or 30 feet from the right-hand side of Sutter Street to the building line of the garage. We were moving into the garage when their car was stopped. The first thing I saw after the Brady car stopped was Mrs. Brady leaving the right-hand side of the Brady car. Brady had been driving the car and she had been next to him in the front seat. While Mrs. Brady left her car and began to walk in the direction that we were, I should judge we moved maybe 10, 12 or 15 feet behind Brady's car and stopped.

(Testimony of Thomas E. McGuire.)

Mrs. Brady walked in a straight line from her car to our car on the right-hand side of both cars. I saw Mr. Brady leave his car a moment or two after Mrs. Brady had been seen to leave the car, and he walked to the front of his car, to the hood of his automobile. I left my car and immediately went to where Mr. Brady was standing. Mrs. Brady was just opposite the front seat of my automobile at the time I left the car. I did not see Mrs. Brady as she [69] walked toward the back of my car. I had just about reached Mr. Brady when I heard Mr. Grady, the narcotics agent, remark, "I have it." After hearing that remark I then went to Brady and told him that he was under arrest. I believe Mr. Ferguson joined me within a moment or so. I believe I was there first. Mr. Brady wanted to know what reason I had for placing him under arrest. He made one or two remarks and a threatening gesture or two, so I had the handcuffs placed on him by Mr. Ferguson. I told him then he had to behave himself and do as I told him. We then walked back to where Mr. Grady, the narcotics agent, was standing with Mrs. Brady. I then took the narcotics that Mr. Grady, the narcotics agent, had in his hand. I asked Mrs. Brady if she had seen the narcotics, and she denied that she had seen them or that she knew anything about them. I stated then in her presence that Mr. Grady, the narcotics agent, whom she knew, had stated that he had seen her drop them. She stated

(Testimony of Thomas E. McGuire.)

she did not drop them. I told the defendant Lawrence Brady at that time that he was under arrest for transporting narcotics, as Mr. Grady, the narcotics agent, had seen Mrs. Brady drop the narcotics. Within a very short while after this we went to the Bradys' room in the Hotel Commodore, across the street from the garage. Mr. Grady and Mr. Ferguson searched the room. I helped search Brady. I took his wallet out of his pocket. It contained a number of race horse tickets and some \$1700 in cash, and his draft card, some seaman's papers. I did not find any narcotics on his person or among his possessions. We had arrived at the hotel room at approximately 7 o'clock or 5 minutes after 7. The arrest took place, I should judge, at 10 minutes to 7.

“Q. Did you have any conversation, or did anyone else in your presence, with either Mr. or Mrs. Brady, relative to this transaction while in the hotel room? [70]

A. Yes. I stated at that time——

Mr. Abrams: Let me make my objection, please. I object to this as incompetent, irrelevant, and immaterial, not part of the *res gestae*, a violation of the constitutional rights of the defendant.

The Court: Overruled.

Mr. Abrams: Exception.”

The witness testified further: While Mr. Ferguson and Mr. Grady were searching the entire room, I had a conversation with the defendants. I told them

(Testimony of Thomas E. McGuire.)

they were under arrest for transportation of the narcotics which I showed them again. Brady then asked that the handcuffs be removed, which was done. I asked him where the narcotics had come from. He said he paid \$300 for it and that he was getting "sick and tired of being taken." Those were the words he used. He said, "This stuff isn't worth \$50 an ounce, and they are holding me up and robbing me of all the money I can put my hands on. What can I get out of the deal if I give you the man's name? What can I do to help myself in this proposition?" I then told Mr. Brady that my district supervisor, Mr. Manning, was the only man who had that responsibility and that I could not give him any understanding or any chance to be released, or any help or any consideration whatsoever; that the only thing I could do was let him talk to my district supervisor, Mr. Manning. He then asked to be taken to the district supervisor, Mr. Manning, so that he could talk directly with Mr. Manning. I attempted to communicate with Mr. Manning by telephone from the hotel room, but was unable to do so at that particular time. We then left the hotel room, Mr. and Mrs. Brady, agent Ferguson and Grady and myself, and went to the Bureau of Narcotics office at 68 Post Street. At about 11:15 or 11:30 Mr. Manning reached the office.

"Q. When Mr. Manning reached there did he have a [71] conversation in your presence with the defendants, or either of them?

(Testimony of Thomas E. McGuire.)

A. Yes, sir.

Q. Did he have them with them together, or were his conversations had with the defendants separately?

A. They were separate.

Q. Which defendant did Mr. Manning speak to first?

A. Brady, himself.

Q. Were you present during that conversation?

A. Yes, I was present throughout most of the conversation.

Q. What did Mr. Brady say to Mr. Manning, or Mr. Manning to Mr. Brady, concerning the transaction under question?

Mr. Abrams: I will object to that on the ground it is incompetent, irrelevant, and immaterial, not part of the *res gestae*, and a violation of the constitutional rights of the defendants.

The Court: Overruled.

Mr. Abrams: Exception.

The Witness: A. At first I gave a detailed report to my immediate superior, District Supervisor Manning, of what had transpired, the extent of the evidence against both defendants produced in the office. After that I stated, I made known to the District Supervisor the message in which Brady had asked me to intercede in his behalf and help him to get some consideration. So with that in mind I called Brady into the District Supervisor's private office. I remained there for some time. The defendant Brady stated to the District Supervisor that he had been addicted to the use of narcotics



(Testimony of Thomas E. McGuire.)

for a period of some two or three years, that he had spent a fortune maintaining his addiction, that he could not carry on and do that, that the heroin had been so badly adulterated that he could not maintain his habit [72] without spending a quite considerable amount of money, he had done so for the past year and a half, and he understood now that the people that he was doing business with were taking him, and practically robbing him of every cent that he had, and under the circumstances he offered to turn over to the boss, to the District Supervisor, all the information that he had, and, furthermore, agreed to tell the District Supervisor the names of several people here whom he was positive that the boss, the District Supervisor did not know were in the narcotic traffic.

Mr. Davis: Q. At that time did Mr. Manning, in your presence, show the defendant this heroin that is marked here for the purpose of identification and have any discussion concerning that?

A. Yes, he did; he showed it to him. He said, 'Larry, how much did you pay for this?' Larry stated he had paid \$300 for it. So the District Supervisor asked him, 'Where did you get it?' So he said, 'Well, I didn't want to get the old lady mixed up in the deal, and' he said, 'I drove to the corner, I left her standing at Lombard and Van Ness Avenue so she wouldn't get mixed into the deal.' He said, 'Why, do I have to tell you the names before you make any agreement with me?' So the District Supervisor said, 'Well, how can



(Testimony of Thomas E. McGuire.)

you tell me the names of others; what is the deal that you want to make?' The defendant stated that to give this information and to turn up these people, to secure the evidence against these people, he would have to be released and have his car returned to him because it had been explained to him that the car had been seized and he could no longer have the car in his name as the Government was seizing it, and that his wife would be arrested. He then [73] asked that his proposition would be that he would have to be released without going to jail, his wife would be released and his car be returned to him. The District Supervisor, of course, told him that that would be impossible and that could not be entered into by anybody, much less the District Supervisor.

Q. Did the District Supervisor, in your presence, have any conversation with Mrs. Brady?

A. He did.

Q. Was that out of the presence of Mr. Brady?

A. She was brought in after Mr. Brady had been let out of the office.

Q. What at that time did Mr. Manning say to Mrs. Brady and what did she say to Mr. Manning?

A. Well, I had previously had the same conversation covering the background of Mrs. Brady with Mr. Manning, the District Supervisor, and the information which Mr. Manning had in the file, and I more or less gave a brief outline to him concerning Mrs. Brady.

(Testimony of Thomas E. McGuire.)

Mr. Abrams: Are you going on with Mrs. Brady's conversation? If you are, I want to make the same objection.

Mr. Davis: Yes.

Mr. Abrams: I make the same objection I made before, it is incompetent, irrelevant, and immaterial, not part of the *res gestae*, a violation of the constitutional rights of the defendant.

The Court: The objection will be overruled.

Mr. Abrams: Exception.

The Witness: A. Mrs. Brady at that time—I stated to Mr. Manning in Mrs. Brady's presence that the arrangements to purchase the narcotics had been made in the hotel room in the afternoon and in Mrs. Brady's presence I explained that [74] there had been a man enter the hotel whom we very highly suspected as being a dealer in narcotics. Mrs. Brady said that he did not go to her room. However, I accused Mrs. Brady of being the one who made the arrangement for this meeting for Mr. Brady with the person from whom he purchased the narcotics. Mrs. Brady denied that, saying that she hadn't talked to anyone in the afternoon, but that she came out with her husband and got into the car and drove down there and got out and he left, and when he came back the narcotics was sitting between her and her husband in the car, and she had picked it up and held it in her hand, intending to take it back to the room, but when she saw the agents she let it go, she didn't hold it any longer.

(Testimony of Thomas E. McGuire.)

Mr. Davis: Q. As far as you recall, that was the gist of the conversation held at the narcotics office at 68 Post Street?

A. There was other conversation there, but at the moment I can't recall exactly. We must have talked at least a half hour, three-quarters of an hour, if not longer, among one another, while the District Supervisor was there, but for the two or three hours before that, waiting for the District Supervisor, we had quite a lengthy conversation with both defendants relative to the narcotic traffic here in San Francisco.

Q. What did you do after these conversations were completed at the narcotics office, what was the next thing you did, as far as the narcotics were concerned?

A. Both defendants were then placed in the City Jail for arraignment before the United States Commissioner, the following day, for narcotics.

Q. I will show you this envelope wrapped in Kleenex, and ask if you have ever seen it before.

[75]

A. This is the envelope of narcotics which Agent Grady gave to me. My initials are on it, 'T. E. McG.' This is the envelope which I showed Mr. Brady and Mrs. Brady at the time of their arrest.

Q. It was wrapped in this Kleenex.

A. Tissue paper, yes.

Q. After you received this package from Mr.

(Testimony of Thomas E. McGuire.)

Grady to whom, if to anyone, did you give the package?

A. I retained it in my custody until the following day, at which time I turned it over to Agent Ferguson, who in turn forwarded it to the United States Chemist."

Cross-Examination

"Q. As a matter of fact, about January of the year before, 1943, you had occasion to meet Mr. and Mrs. Brady at the Sir Francis Drake Hotel, where they were staying, and searched their apartment, did you not?

Mr. Davis: I object to that on the ground it is incompetent, irrelevant, and immaterial, and has no bearing on the issues of this case, and being too remote.

The Court: What is the purpose of the testimony?

Mr. Abrams: To show this jury Mr. McGuire knew the Bradys and had endeavored to locate narcotics there at that time but was unsuccessful, two years before.

The Court: Objection sustained.

Mr. Abrams: Exception.

Q. That is the first time you met Mr. or Mrs. Brady, January of 1943, approximately, at the Sir Francis Drake Hotel?

Mr. Davis: I make the same objection, your Honor. The Court has already ruled on this line of questions.

(Testimony of Thomas E. McGuire.)

The Court: Well, for the purpose of identifying them and being acquainted I will allow it.

The Witness: A. In a sense of the word, I was [76] acquainted with them before that. The first time I had spoken to them was about that date that you say. I had a report on them, yes.

Mr. Abrams: Q. That was the first time you talked to them?

A. That was the first time I talked to them, yes."

The witness testified further: When we returned from Van Ness Avenue and Lombard Street to the garage, I would say that our car had stopped at the time Mr. Grady got out. I believe Mr. Ferguson got out of the car almost at the same time agent Grady did. We all three got out as quickly as we could.

"Q. Did you have any prearrangement about getting out of the car? A. No.

Q. You just happened to get out?

A. Yes, sir.

Q. When your car had come to a stop you just all got out, there was no prearrangement about it?

A. No, there wasn't any.

Q. Page 61 of the transcript. Would you read that, Mr. McGuire?

Mr. Davis: Lines?

Mr. Abrams: Line 18 to the end. (Hands transcript to witness). Do you remember at the last trial of this case being asked this question and you giving this answer:



(Testimony of Thomas E. McGuire.)

‘Q. What was the next thing that you observed, if anything?

A. Well, I immediately, of course, when Agents Grady and Ferguson, by prearrangement they got out on their side of the car. I immediately got out on my side of the car and went directly to where Mr. Brady was.’

Do you remember that question and that answer?

A. I see by the record that it was asked. I don’t recall that question, but it evidently was asked.

Q. Do you recall giving that answer? [77]

A. I cannot recall giving that answer.

Q. Well, what do you think? You might have acted by prearrangement there?

A. Well, it is not clear, counselor, as far as I can see, whether by prearrangement that they were getting out of the car, or prearrangement that they were going to be arrested or prearrangement that we were going to pick them up.

Q. That is what you meant by the word ‘prearrangement’ there?

A. No, I wouldn’t say I did, not in the sense it is used there.

Q. There was no prearrangement, then, for Grady and Ferguson to get out and for you to get out and act in any certain way?

A. We had not arranged how they were to get out or when they were to get out, or how they were to go about that.



(Testimony of Thomas E. McGuire.)

Q. Was there any prearrangement that Mr. Grady was to jump out and grab ahold of Mrs. Brady, and you and Ferguson would go forward and grab ahold of Mr. Brady, wasn't that what you meant by prearrangement?

A. No. I don't know just how that word was used there, I mean in the sense of prearrangement how we were to get out of the car."

The witness testified further: When I got out of the car I immediately went to the front of Brady's car where Brady was.

"Q. What was Brady doing at the time?

A. He was just standing there when he saw me walking up to him.

Q. Was he doing anything in connection with his car?

A. I did not observe anything.

Q. Page 62, immediately after what I just read a moment ago, just the first paragraph of page 62. Do you remember these questions and answers:

[78]

'Q. Mr. Brady?                      A. Mr. Brady.

Q. Where was he at that time?

A. The defendant, Mr. Brady, was standing in the front of his car just getting ready to open the hood of his automobile.'

Do you remember that question and answer?

A. I see by the record that it was asked. I don't recall—it says there that was exactly what was said.

(Testimony of Thomas E. McGuire.)

Q. Do you recall now that Mr. Brady was tinkering with the hood of his car at the time you approached him?

A. No. I recall later, because I read that transcript, that further on I stated that he told me he was going to open the hood of his car.

Q. You actually saw him tinkering with the front of his car, didn't you?

A. When I walked up to him I don't think he was doing anything. He might have been. I won't deny that.

Q. What do you mean, 'just getting ready to open the hood'?

A. He was standing right there in a position where he might have opened it if he continued on with his actions, but when he saw he he was frozen.

\* \* \* \* \*

Mr. Abrams: Q. You say he was just getting ready to open the hood?

A. That is my impression, my opinion.

Q. From what you saw?

A. That is, I had an opinion that he might have been doing that.

Q. You did not say he might have been. You say he was in front of his car, just getting ready to open the hood on his car, and you made that statement because of what you observed there?

A. No. I observed him at the front of the car, he might have been ready to open it—— [79]

Q. Well, we will find it at another place, here. We have it at another place. Page 71. Maybe this

(Testimony of Thomas E. McGuire.)

will hit it here. Read this down here on page 71 and over onto 72, start at line 29, just a couple of lines down there.

A. Wait a minute. There is something here.

Q. I am not trying to catch you.

A. Yes, that is the substance.

Q. Do you remember my asking you on cross-examination in the last trial of this case, asking you these questions and you giving these answers:

‘Q. You got out of the car and you went up to where he was standing in front of his car. He was tusseling around with the radiator, wasn’t he?

A. The impression I received was that he was going to open the hood, because he was standing right there, and then he told me that he was when we were talking about it in the office.’

Do you remember that question and you giving that answer? A. Yes.

Q. Did you hear Mr. Grady exclaim, ‘I have it,’ or something to that effect?

A. Yes; to the best of my knowledge he said, ‘I have it,’ or ‘I found it.’

Q. Where were you when you heard that?

A. Just about at Brady’s side.

Q. Had you just gotten there?

A. Just about. I would judge—it happened so quickly, I would say just about that time.

Q. Just about as you got to him?

A. It might have been while I was walking up to him, it was in a very close time.

Mr. Davis: Just a minute. [80]

(Testimony of Thomas E. McGuire.)

Mr. Abrams: Are you satisfied with that answer?

Mr. Davis: I believe you said just as it appeared he got there. You are talking about someone calling out?

Mr. Abrams: I may have. You heard that shout just as you were getting to Brady?

A. Just as I was getting to him; I was only 15 or 20 feet away from him at any time, so when I heard it I couldn't say right now, counselor.

Q. You practically got to Brady's side just seconds after, almost instantaneously with Grady getting out of the car?

A. It all happened very quickly, yes.

Q. It wasn't, then, four or five minutes after Grady had gotten out of the car that you heard the shout, or exclamation, 'I have it', was it?

A. My impression is it was very quickly; it was not four or five minutes' time, although I won't be sure of the amount of time consumed, but it seems to me it was almost at the same time."

The witness testified further: When Mrs. Brady had left the Brady car and was approaching our car, I observed her carrying a large purse out in front of her. I did not see any little white package in her hand or arms. I did not see her drop a package. After the arrests, I recall Mr. Ferguson saying that he had seen the package drop. He said that while we were all standing together at the place where Mrs. Brady and Mr. Grady had been standing and I was giving directions.

(Testimony of Thomas E. McGuire.)

“Q. Do you recollect being asked these questions and giving these answers on the prior trial of this case:

‘Q. He was sitting in the back?

A. Ferguson was in the back seat.

Q. Did he make any statement as you drove in and [81] observed Mrs. Brady? A. Yes.

Q. What did he say?

Q. Do you want me to tell you what Ferguson told me? He told me that she dropped it, he saw it.

Q. Ferguson said he saw her drop it?

A. Yes, he told me in the car.

Q. He told you he saw her——

A. I won’t say he told me in the car, it happened so quickly, but he had seen it.

Q. While he was in the car?

A. I won’t say whether it was in the car.’

Do you remember those questions and answers?

A. Only from refreshing my memory on it, I remember that now.

Mr. Davis: I object, your Honor, to this line of questioning on the ground that there has been no conflict shown between this testimony and what the witness testified to now.

The Court: The jury heard the testimony.

Mr. Abrams: You bet they did.

Q. I will ask you again, where was it that Ferguson told you—where were you when Ferguson told you that he saw a package drop; was it in the car, as you testified here? A. No.



(Testimony of Thomas E. McGuire.)

Q. Or—wait a minute—or was it out of the car, or was it at a time when you were in that car, or just getting out of the car, or was it after when you were all together, as you just testified?

Mr. Davis: I object to that for the same reason. Counsel, I believe, is misstating the record. The witness on the first trial said, 'I won't say he told me in the car, it happened so quickly, but he had seen it.'

Mr. Abrams: Read the first part. He said in the car. He is testifying, if the Court please—I just want to ask [82] the witness now, I think I have a right to. Where were you when Ferguson told you that?

A. I couldn't say where I was. All I can definitely say——

Q. Were you in the car?

The Court: Just a minute. Let him conclude the answer.

A. All I can definitely say is that Ferguson stated that he had seen it drop. I cannot say whether it was in the car, while we were all standing together, or while we were standing at the front of Brady's automobile at that time, although I definitely heard Ferguson say that he had seen her drop it.

Mr. Abrams: Q. You say here, 'Yes, he told me in the car.'

A. And then I qualified it later on, four sentences down, I said, 'I won't say whether it was in the car.'



(Testimony of Thomas E. McGuire.)

Q. But a few minutes ago you said it was when you were all together.

A. I said it could be when we were all together, it could be at the front of the car or could be in the car; I won't say definitely when I heard the remark, it happened so quickly.

Q. You heard Mr. Ferguson testify in this case after you testified at the last trial, didn't you?

A. I was in the court-room when he testified, yes.

Q. You recall, Mr. McGuire, don't you, very clearly, that when Mr. Ferguson testified on the previous trial after you had finished your testimony in the first trial, you recall sitting there with Mr. Davis and you recall hearing Mr. Ferguson——

Mr. Davis: If the Court please, I object to that question as to what Mr. Ferguson said. Mr. Ferguson is not on the witness stand.

Mr. Abrams: I am asking him whether he heard it. This [83] is proper impeachment, because he is testifying differently now than he did at the last trial, and that he heard Mr. Ferguson.

The Court: Just a moment. Let the jury disregard that statement for any purpose in this case. It has no place in the record, at all. Let's proceed in an orderly manner.

Mr. Abrams: Let me ask you this: Do you recall the last trial of this case? A. Yes.

Q. You were the second witness to testify?

A. I couldn't answer that. I was one of the witnesses.

(Testimony of Thomas E. McGuire.)

Q. You were here——

A. Yes; I don't know whether I was the second or fourth. I believe the chemist was the second witness and then I went on, if you want to be exact, but I did testify.

Q. You were designated by the Government as the witness to stay here and direct the course of the trial during the whole course of the trial?

A. I was retained by the United States Attorney.

Q. And sat there during the whole course of the trial as the agent designated to help Mr. Davis and assist him in the trial of the case?

Mr. Davis: I object to that as incompetent, irrelevant, and immaterial.

The Witness: A. Yes.

Mr. Abrams: Q. You were here when every witness testified? A. Yes.

Q. You heard every witness testify?

A. Yes.

Q. But every witness did not hear you testify, did they?

A. I cannot answer that, but I would say no. The rule was on.

Q. Mr. Ferguson went on and was not permitted to be in the [84] court-room while others were testifying; is that true? A. Yes.

Q. You heard his testimony but he did not hear your testimony; is that correct?

Mr. Davis: I object to that as being incompetent, irrelevant, and immaterial.

(Testimony of Thomas E. McGuire.)

Mr. Abrams: I am coming to it, your Honor; I am coming to it right now.

Q. Can't you answer that without looking at his Honor?

The Witness: Well, an objection was made. I didn't hear it ruled on. I will answer it if you wish. I sat here while the other witnesses testified. I heard Mr. Ferguson testify.

Q. But he did not hear you testify?

A. No.

Q. Did you hear Mr. Ferguson testify in response to my question when I asked him where he was when he mentioned to you, or to the other agent, where he was when he mentioned that he had seen a package drop? You heard him testify, did you not, that it was up in front of the garage when you and he had taken Brady up there and to where Grady and Mrs. Brady were, that was when he mentioned that he saw a package dropping; do you remember hearing that at the last trial of this case?

Mr. Davis: I object to that as incompetent, irrelevant, and immaterial, what Mr. McGuire heard Mr. Ferguson testify to, whether he heard him or did not hear him.

Mr. Abrams: I asked him if he heard Mr. Ferguson testify to that fact, and the jury has a right to come to some conclusion, or draw some inference as to the reason for his testimony in this case. It all goes to the weight of the testimony. [85]

(Testimony of Thomas E. McGuire.)

Mr. Davis: You can ask Mr. Ferguson when he testifies.

Mr. Abrams: He is the one who is testifying.

The Court: Read the question.

(Question read by the reporter.)

The Court: You may answer.

The Witness: A. I can't remember that exact question."

The witness testified further: When I went to where Brady was standing at the front of his car in the garage, I frisked Brady for a gun and ordered the handcuffs put on him. That was after I had heard Grady shout, "I have it."

"Mr. Abrams: Q. You frisked him and then you put the handcuffs on; is that right?

A. I won't say that, Counselor. I will say—I will qualify that by saying that immediately I went to him I began to frisk him. I don't remember if it was the result of frisking him that he made the threatening gesture and I ordered the handcuffs put on, or that when I went to him he made a threatening gesture and I ordered the handcuffs put on him; it took longer to put the handcuffs on him than to frisk him.

Q. You don't change your answer simply because I——

The Court: Just a moment. You proceed. You know better than anyone who comes in here you cannot proceed that way. You use argument in your questions and you are arguing with the wit-

(Testimony of Thomas E. McGuire.)

ness, something that has no place here. Proceed in the usual way.

Mr. Abrams: I am asking him if he changes his testimony here because——

The Court: The jury heard the testimony. They will determine what the witness has said.

Mr. Abrams: Q. In other words, you are not sure which [86] took place first, the handcuffing or the frisking?

A. I won't say positively, no, not to the extent of swearing which actually took place. I say both took place, but in orderly procedure of that, I won't swear to it.

Q. You would not frisk a man with a gun after you put the handcuffs on him, however; that is not the usual procedure?

Mr. Davis: I object to that.

The Court: Objection sustained.

Mr. Abrams: Q. I mean there wouldn't be a necessity for frisking him for a gun if has the handcuffs on?

Mr. Davis: Same objection.

The Court: Objection sustained.

Mr. Abrams: Q. Is that the usual procedure?

Mr. Davis: Same objection.

The Court: Objection sustained.

Mr. Abrams: Exceptions for all those, your Honor.

Q. As a matter of fact, you searched him for narcotics, didn't you?

A. I did not make any search for narcotics, no.



(Testimony of Thomas E. McGuire.)

Q. Isn't that the custom?

Mr. Davis: I object to that.

The Court: Objection sustained.

Mr. Abrams: Q. Don't you always search a man for narcotics when you arrest him?

Mr. Davis: Same objection.

The Court: Sustained as to what he always does.

Mr. Abrams: Exception. Aren't we permitted, your Honor——

The Court: What was done in this case?

Mr. Abrams: Q. You did search this man after you arrested him and placed the handcuffs on him, you did search him to see if he had narcotics in his possession? [87]

A. I did not search that man for narcotics, no.

Q. You searched him only to see if he had a gun? A. That's right.

Q. Did you find a knife in his pocket?

A. That's right.

Q. What kind of a search did you make?

A. I felt of his body, where the gun is usually kept by men, in the belt, his hip pocket. I felt the inside coat pocket. I felt the knife and I removed the knife.

Q. Did you go into his pocket?

A. I took the knife out when I felt it from the outside. I struck the sides of his coat and I felt the knife and removed it.

Q. You went into his pockets, didn't you?

A. The one pocket, yes.

Q. Page 73, beginning with line 20, down



(Testimony of Thomas E. McGuire.)

through line 1 on the next page, 74 (handing transcript to witness.)

A. Yes, that is substantially what I said.

Q. You remember all that?

A. Yes, I mean I remember about that taking place.

Q. Do you remember being asked these questions and giving these answers on the last trial of this case:

‘Q. Who put the handcuffs on Brady?

A. Mr. Ferguson.

Q. Ferguson was putting the handcuffs on him while you were searching him?

A. I wouldn’t say that. When I first went to search the man—when I stood there and I went to searching him I removed a knife from his pocket at that time, and at that very moment he drew back and in a threatening—what I thought was a threatening manner, I then ordered the handcuffs placed on him by Mr. Ferguson. Mr. [88] Ferguson had the handcuffs, and the handcuffs were placed on him then. Then I continued the search, just a quick search over his body to make sure the gun was not there. Then I brought him to where his wife was standing with Mr. Grady, the narcotics agent.’

Do you remember those questions and answers?

A. Yes.

Mr. Davis: I object to this line of questioning, your Honor, on the ground that there is no showing that there is any conflict between the testimony,

(Testimony of Thomas E. McGuire.)

no foundation for impeachment here. Mr. Abrams is putting his own interpretation on certain words.

The Court: Well, if there is a conflict the jury heard the testimony.

Mr. Davis: As long as it is understood the witness has not been impeached.

Mr. Abrams: Q. You also took money and some mutuel tickets out of his pocket at the time you searched him?

A. That was up in his room and at that time I counted out \$1700, and it involved quite considerable counting.

Q. When you searched him down there you found that money and those tickets in his pocket?

A. No, I don't think I did. That money was found in the room and counted in the room. I laid the money down on the bed while I was counting it. It was in hundred-dollar bills, and about \$1300 in racehorse tickets was counted out, by the way.

Q. Mrs. Brady and Mr. Brady, in the garage, both told you that they didn't know anything about that package?

A. They both stated that in the garage when they were first arrested.

Q. That was the first statement you had from them in the [89] garage, there?

A. That was the first statement, that they denied owning it."

The witness testified further: In my conversations with Mr. Brady I did not suggest to him that he had paid \$300 for the heroin, U. S. Exhibit No. 1

(Testimony of Thomas E. McGuire.)

for Identification. He informed me that it cost him that much. He asked me for consideration, to be allowed to turn up the people with whom he was dealing in narcotics; in other words, his source of supply, some of whom he stated were the biggest shots in town. Later in the conversation with Mr. Manning he made the same statements, but asked that in return for supplying this information to us that he and his wife not be arrested, that no charge be placed against them, and that his car be released. Mr. Manning refused to agree to such a proposition as made by the defendant Brady. I made no written memorandum of my conversations with the defendants. They were not asked to sign any written statements. I know a man by the name of Irving Cowan.

“Mr. Abrams: Q. You arrested him, did you not, on an alleged narcotic transaction just a short time before the Bradys were arrested?”

Mr. Davis: I object to that as improper cross-examination.

The Court: I will sustain the objection at this time.

Mr. Abrams: Exception.

Q. Did you have any conversation at or about that time, just prior to the arrest of the Bradys, with Cowan, relative to the Bradys?

Mr. Davis: I object to that as improper cross-examination.

Mr. Abrams: I want to show bias, prejudice and motive. [90]

(Testimony of Thomas E. McGuire.)

Mr. Davis: There is nothing in the record, here, of anybody by the name of Cowan.

The Court: I will sustain the objection at this time.

Mr. Abrams: Exception.

Q. Did you ever tell Cowan——

Mr. Davis: I will object, your Honor, to anything that this witness may know about Cowan, anything he may have told Cowan is incompetent, irrelevant, and immaterial, and has no bearing on the issues of this case, and it is improper cross-examination.

Mr. Abrams: May I ask one or two preliminary questions before your Honor rules, to give an idea of what I am driving at?

Mr. Davis: The Court has already ruled on all the questions you asked, outside of the first one, if the witness knew Cowan.

The Court: I cannot anticipate what this trial may develop. At this time I will sustain the objection to those questions.

Mr. Abrams: Q. Did you have any conversation with Mr. Cowan in which you—prior to the arrest, just prior to you arresting Mr. and Mrs. Brady, in which you told him that you were not particularly interested in Cowan, but you would like to have him—but you were interested in getting the Bradys and that you would like to have Cowan help him along that line, and that Cowan would get some consideration from you if he played along?

Mr. Davis: Same objection.

(Testimony of Thomas E. McGuire.)

The Court: I will allow the witness to answer.

The Witness: A. No, I did not have any conversation with Cowan relative to testifying against Mr. Brady. [91]

Mr. Abrams: Q. Did you have any conversation with Cowan about giving you an affidavit or appearing before the Federal grand jury against Brady?

Mr. Davis: I make the same objection. We are just going far afield here. We might as well be talking about Smith.

The Court: Objection sustained.

Mr. Abrams: Exception.

Q. Mr. Brady came over to Mr. Cowan's room at your request at the time you arrested Mr. Cowan, did he not, just prior to Mr. Brady's arrest?

Mr. Davis: To which I make the same objection.

The Court: At the time of the arrest?

Mr. Abrams: Q. Mr. Brady came over to Mr. Cowan's room at your request at the time that Mr. Cowan was arrested just shortly before the Bradys' arrest?

Mr. Davis: Same objection, your Honor. It is with reference to some arrest that took place long before the transaction involved here.

The Court: Sustained.

Mr. Abrams: Exception.

Q. Didn't you arrest Mr. Cowan and at that time find some narcotics in his possession, heroin, the same as this heroin identified in this case, and ask Cowan to say that he had got that stuff for Larry Brady?



(Testimony of Thomas E. McGuire.)

Mr. Davis: Same objection.

The Court: You may answer.

The Witness: A. No, I did not.

Mr. Abrams: Q. Didn't Cowan tell you that he could not state that or say that, because it was not true?

Mr. Davis: Again, the same objection. [92]

The Court: Objection sustained.

Mr. Abrams: Exception."

The witness testified further: On April 4 the round trip from the garage on Sutter Street to Van Ness Avenue and Lombard took us about twenty minutes. We left the garage at about 6:15 or 6:25 to make the trip to Lombard and Van Ness Avenue, and got back to the garage before seven o'clock.

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## TESTIMONY OF JAMES FERGUSON

For the United States:

James Ferguson, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is James Ferguson, and I am an agent of the Federal Bureau of Narcotics. On April 4 I saw the defendants, Lawrence and Margaret Brady, near the Commodore Hotel on Sutter Street. At that time I was with agent McGuire and agent Grady. I saw the defendant Lawrence Brady first. He drove his car into the garage and then went into the Commodore Hotel.



(Testimony of James Ferguson.)

“Mr. Abrams: Mr. Davis, we might do as we did before with this witness to try to shorten this up. I am directing my cross-examination of this witness entirely to what took place in the garage there. If you want to we can stipulate he will testify to that point corroborating the other officers.

Mr. Davis: All right.

Mr. Abrams: Carry on from there.

Mr. Davis: The stipulation is if this witness testified in answer to my questions up to the point of what transpired in the garage, that he would corroborate the other witnesses who have preceded him.

Mr. Abrams: Yes, because he was right along with them [93] and actually saw what they saw.

Mr. Davis: So stipulated.”

The witness testified further: On the return trip from Lombard Street and Van Ness Avenue Brady's car made a left-hand turn from Sutter Street into the garage. We made a left-hand turn and followed Brady's car into the garage. As our car entered the garage I saw Mrs. Brady get out of the right-hand side of the Brady car. Our car drove into the garage and stopped behind the brady car. Agent Grady got out first. As he did so Mrs. Brady was about opposite the right-hand side door of our car, between that door and the rear fender. I saw Mrs. Brady drop a package. When I first saw the package it was in the act of falling to the floor in a straight line from her body, and it was about three or four inches from her body. Agent Grady picked the package up off the

(Testimony of James Ferguson.)

floor. I then went to the rear of the garage and to the front of Brady's automobile, where the defendant Brady and agent McGuire were. At that moment I heard agent Grady say, "I have it." Agent McGuire then told Brady he was under arrest and I put the handcuffs on Brady. U. S. Exhibit 1 for Identification, which you show me, is the package agent Grady picked up. I received that package from agent McGuire and kept it in my possession until I delivered it to the United States Internal Revenue chemist the following day.

"Mr. Davis: If the Court please, at this time we offer in evidence this brown paper envelope containing heroin wrapped in two pieces of white Kleenex, as Government's exhibit first in order in evidence.

The Court: It will be admitted and marked.

Mr. Abrams: Your Honor, may I ask—you just offered that in evidence?

Mr. Davis: Yes, because that completes the chain. [94]

Mr. Abrams: Your Honor, I was making a note here, and I did not have an opportunity of objecting. May I interpose an objection to that before your Honor admits it in evidence?

The Court: Very well.

Mr. Abrams: I object to it as incompetent, irrelevant, immaterial, illegally obtained, and in violation of the constitutional rights of the defendants.

The Court: In what manner was it illegally obtained?

(Testimony of James Ferguson.)

Mr. Abrams: Well, I raised that in my motion, your Honor, preceding the trial of this case, when I made a motion and your Honor denied it.

The Court: Objection overruled; exception.

Mr. Abrams: Yes, exception.

(The heroin was marked U. S. Exhibit 1 in evidence.)”

Cross Examination

I was getting out of the car when I saw the package drop. Agent Grady had already gotten out of the car.

“Q. Did you see Mrs. Brady drop the package?

A. Yes.

Q. Page 89 of the transcript. Would you mind, Mr. Ferguson, reading this, lines 21 to 23.

A. Yes.

Q. Do you remember my asking you, or you being asked by Mr. Davis, rather, in the last trial of this case, this question, and giving this answer:

‘Q. At that time did you or did you not see Mrs. Brady drop a package?

A. I saw a package fall to the floor alongside of her hand.’

A. That is correct.

Q. Do you remember that question and answer?

A. Yes, sir.

Q. Is that correct?

A. That is correct.”

The witness testified further: [95]

“Q. Do you remember me asking you these ques-

(Testimony of James Ferguson.)

tions on cross examination at the last trial of this case and you giving these answers:

‘Q. Mr. Ferguson, when did you first see the package?

A. Just as I was getting out of the car.

Q. Which side of the car did you get out of?

A. The right hand side.

Q. Where was the package when you saw it?

A. On the floor.

Q. On the floor of the garage?

A. I saw it drop to the floor of the garage.

Q. You saw it drop to the floor of the garage?

A. Yes.

Q. Or did you see it on the floor?

A. No; I saw it drop. That is what attracted my attention.

Q. Did you see where the package came from?

A. I didn't see it in her hand.

Q. You did not see it in her hand, but just saw a package dropping on the floor of the garage?

A. Yes, right within five feet of her—I mean five inches of her shoe.’

Do you remember giving those questions and those answers?

A. Yes; that is correct, I did.

Q. Now, I am asking you, this is the question: Did you see Mrs. Brady drop the package, as you just testified a little while ago, or did you just see the package on the floor of the garage, or dropping to the floor of the garage, as contained in this transcript?

(Testimony of James Ferguson.)

A. I saw the package in the act of dropping to the floor of the garage. I did not see it in her hand.

Q. You did not see Mrs. Brady drop the package? [96]

A. I did not see it in her hand.

Mr. Davis: I object to that as argumentative. He said he did not see it in her hand, but he saw it falling.

Mr. Abrams: Q. Did you see Mrs. Brady drop the package?

A. I did not see it in her hand."

The witness testified further: Agent McGuire got out the left-hand side of our car. When I saw the package dropping and Mr. Grady got to it, I was in the act of getting out of the car; I paused for a moment and then went up to where the defendant Brady was at the front end of his car.

"Q. Why didn't you stay there and assist Mr. Grady in recovering the package and placing Mrs. Brady under arrest?

Mr. Davis: I object to that on the ground it is argumentative.

The Court: Sustained.

Mr. Abrams: Q. Did you have any reason for going to the back of the garage, where Mr. Brady was, and not staying in front with Mr. Grady?

Mr. Davis: I object to that as argumentative.

The Court: Sustained.

Mr. Abrams: Exceptions to both the rulings your Honor last made."



(Testimony of James Ferguson.)

The witness testified further: I went to the back of the garage to assist agent McGuire. I did not remain to assist Mr. Grady.

“Q. You did not think Mr. Grady required any assistance?

Mr. Davis: I object to that as argumentative.

The Court: Sustained.

Mr. Abrams: Exception.”

The witness testified further: When agent McGuire and I and the defendant Brady came up to where agent Grady and Mrs. [97] Brady were standing, I made the statement in front of the two defendants that I saw the package thrown to the floor of the garage.

“Q. Mr. Ferguson, why didn't you say that to them, or mention that the moment you saw the package drop?

Mr. Davis: I object to that as argumentative.

The Court: Sustained.

Mr. Abrams: Exception.”

The witness testified further: When I first went to the front of the Brady car, agent McGuire and Brady were having a conversation. In a matter of seconds I heard agent Grady say, “I have it.” Agent McGuire then frisked Brady for a gun and asked me to put the handcuffs on Brady, which I did; told him he was under arrest. It was a very short period of time that Mr. Brady and agent McGuire and myself were together in front of Brady's car.

“Q. About how long would you estimate it in minutes, or seconds?



(Testimony of James Ferguson.)

A. Oh, I suppose it would be a couple of minutes, maybe three minutes.

Q. A couple of minutes? A. Yes.

Mr. Davis: The witness said three minutes.

Mr. Abrams: Wait a minute, now. Let's see whether he said that.

The Witness: I didn't time it. I am just guessing at it; a short time.

Q. A couple of minutes, or three minutes?

A. Two or three minutes; maybe three minutes.

Q. Wouldn't be over three minutes?

A. That is correct.

Q. That you were down there with Brady before you had come up there where Mrs. Brady was?

A. That's correct.

Q. Page 91; 92, also, where the same thing comes in. [98]

Mr. Davis: Page 91; which lines?

Mr. Abrams: Page 91, beginning line 22 through line 24, and page 92 beginning line 14 down through 29.

Q. Mr. Ferguson, would you read those two or three lines right in there, and then over on this page, from here down to the end of the page (handing transcript to witness).

Now, Mr. Ferguson, do you recall in the last trial of this case you being asked these questions and giving these answers on cross examination by myself:

'How long were you at the front of his car?

Would you say as long as 10 minutes?

(Testimony of James Ferguson.)

A. No, I wouldn't say that.

Q. As long as 5 minutes?

A. 4 or 5 minutes.'

Then a little bit later on, I am asking you the questions again and you giving the answers:

'Q. What was going on during that 5-minute period down there in front of the car between you and Mr. McGuire and Mr. Brady?

A. Well, as soon as Agent McGuire told the defendant that he was under arrest he started to back off and I put the handcuffs on his wrist, and then we came up to where Mrs. Brady and Agent Grady were standing.

Q. Well, never mind. But you got out there—you were down there in front of the car for about five minutes. I want to know what took place at that time.'

There is an objection by Mr. Davis.

Mr. Davis: Why don't you read it?

Mr. Abrams: 'Mr. Davis: I object to the question.

Counsel is misstating the evidence. There is no record that they were there for five minutes.'

Do you really want me to read it? [99]

Mr. Davis: Yes.

Mr. Abrams (Reading): 'Mr. Davis: I object to the question. Counsel is misstating the evidence. There is no record that they were there for five minutes.

Mr. Abrams: The agent just testified to that.

The Court: Did you say they were there for five minutes?

(Testimony of James Ferguson.)

The Witness: Maybe three or four minutes.

The Court: Maybe three or four minutes.'

Do you recall all that?           A. Yes.

Mr. Davis: Of course, I make the same objection here, that this is an attempt at impeachment; it is obviously ridiculous.

The Court: The jury heard the testimony.

Mr. Abrams: A matter of two minutes is important in a matter like this about what is going on down there.

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Q. Mr. Ferguson, when I read this to you, your testimony in the previous trial in relation to the distance from her feet where the package was found, and you said, 'Yes, right within five——'

Mr. Davis: What page?

Mr. Abrams: Page 90, at the bottom:

'Yes, right within five feet of her,' and then you immediately said after 'I mean five inches of her shoe.' Was there any particular reason that you had in mind for saying 'five inches of her shoe' after you had said 'five feet of her'?

A. Well, I don't recall saying five feet. If I did it is absurd, because it was right within a few inches of her shoe.

Q. It is in the record here. You don't doubt you said it? [100]

A. I guess I did if it is in there.

Q. Would you say it is just a slip, or——

A. I would say just a slip, yes.

(Testimony of James Ferguson.)

Q. What you really meant to say, instead of five feet, you meant to say five inches?

A. Why, certainly.

Q. You weren't prompted in saying that by reason of anything that might have transpired in the testimony prior to your taking the stand?

A. That is absurd."

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### TESTIMONY OF JOSEPH A. MANNING

For the United States.

Joseph A. Manning, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Joseph A. Manning, and I am the District Supervisor of the Bureau of Narcotics, and I have acted in that capacity since 1921. I have been the District Supervisor of the district comprising the States of California, Nevada and Arizona since 1936. On the 4th day of April I had a conversation with these two defendants, Lawrence and Margaret Brady, in my office. The conversations began at about 11:30 and extended past midnight. I was mistaken in the previous trial when I testified that the conversations occurred about 8 or 9 o'clock. Since that time I have checked my data and I find that I was mistaken. I spoke to each defendant separately. Agent McGuire and Agent Grady were present part of the time. They

(Testimony of Joseph A. Manning.)

were in and out of the office; sometimes neither were present. I spoke to the defendant Larry Brady first.

“Q. Will you tell us to the best of your recollection what the conversation was that you had with Larry Brady on that night?

Mr. Abrams: I will make my objection here that it is [101] incompetent, irrelevant, and immaterial, not part of the *res gestae*, and a violation of the constitutional rights of the defendant.

The Court: Overruled; exception.”

The witness testified further: Agent McGuire had handed me a package, an envelope containing heroin. It was lying on my desk. Brady was across the desk from me. I asked him where he got this heroin. He said he got it from a fellow on Van Ness Avenue, and that he paid \$300 for it; that he had spent large amounts of money in making purchases of heroin, and that it was badly adulterated. He called it “flea powder.” He told me his wife accompanied him to Van Ness Avenue and Lombard; that she left the car at that point; that he drove on three or four blocks where he met the man from whom he obtained the heroin. Brady then made the proposition to me that if I would turn him loose and his wife loose and release the car, that he would help me catch other peddlers of narcotic drugs, peddlers more important than I knew about. I told him I could not very well accept such a proposition as that. I told him if he would help me catch these peddlers I would inform the United



(Testimony of Joseph A. Manning.)

States Attorney of that fact, and the United States Attorney would doubtless make such fact known to the Court, and that a lighter sentence in the case would be given him. He would not agree. He said if he or his wife went to jail and he lost his car he would "just as soon go all the way as get just, say, a small sentence." I told him that I didn't have the power to turn him loose under the circumstances. I then questioned Mrs. Brady separately under the same circumstances, the same time and place, and with the other agents in and out of the room.

"Q. Will you tell us to the best of your recollection what the substance of the conversation was that you had with [102] Mrs. Brady?

A. I asked her where she obtained the package.

Mr. Abrams: The same objection as interposed to the prior conversation, your Honor; it is incompetent, irrelevant, and immaterial, not part of the *res gestae*, and a violation of the constitutional rights of the defendants.

The Court: Overruled.

Mr. Abrams: Exception."

The witness testified further: Mrs. Brady said that when her husband drove the car into the garage she picked the package up off the seat of the car. It was between them. She got out of the car, and when she saw the agents she threw it to the ground. She said she had intended to take it up to her room in the hotel.

U. S. Exhibit 1 in evidence, which you are show-



(Testimony of Joseph A. Manning.)

ing me, is the package which was lying on my desk and the one that I asked Brady where he got it.

### Cross Examination

This conversation with Brady occurred at my office on Post Street between 11 and 12 o'clock at night. At the first trial of this case I testified that the conversation took place at about 8:30 or 9 o'clock in the evening. I first realized that I was mistaken as to the time of the conversation soon after I left the courtroom during the first trial. The agents reminded me they had been trying to get me on the phone all evening, and I remembered I had attended a show that evening. When Agent McGuire called my attention to the fact I had testified wrongly about the time that the conversation occurred, I readily remembered that they had held the prisoners while waiting for me to talk to them. The notes that I glanced at very briefly at the beginning of my testimony during the previous trial did not contain a notation [103] as to the time the conversations were held with the defendants.

“Q. Now, Mr. Manning, you mentioned the words ‘I will go all the way’ in your testimony just a few minutes ago, in saying that Mr. Brady said he might as well go all the way and for a trial, and everything else; is that correct, you just said that?”

A. Mr. Brady said when he propositioned me to help in catching peddlers, he in the course of that conversation remarked, ‘If I agree to help you I will go all the way with you.’

(Testimony of Joseph A. Manning.)

Q. That is correct, that is what you testified in the last trial of this case. A. Yes.”

The witness testified further:

“Q. Now, Mr. Manning, it is true you have not the power to turn a man loose that you arrest for some violation; is that true, you have not got that discretion vested in you?

Mr. Davis: If the Court please, I will object to this line of testimony as being incompetent, irrelevant, immaterial, having no bearing on the issues in this case. The ultimate fact is that these defendants were arrested. Whether he has or has not the power to release anyone else is immaterial.

The Court: The objection will be sustained.

Mr. Abrams: It is a part of the conversation.

The Court: The Court has ruled.

Mr. Abrams: Exception.

Q. As a matter of fact, you have, in the course of your duties, in an effort to catch higherups and reach the source of supply of narcotics, you have turned certain defendants, or persons you have arrested or had under observation, or believed to be trafficking in narcotics, you have turned [104] them loose or given them some consideration afterward, or agreed to do that?

Mr. Davis: The same objection upon the ground already stated, and I make the objection it is compound and complex.

The Court: Sustained.

Mr. Abrams: Exception.

(Testimony of Joseph A. Manning.)

Q. As a matter of fact, it is your policy to reach the source of supply of narcotics and reach the higherups and arrest them; isn't that true?

Mr. Davis: I interpose the same objection.

The Court: Sustained.

Mr. Abrams: Exception.

Q. You would not turn down a proposition, would you, that is given to you by somebody who, you might say, might be just found in possession of narcotics, or might be just presumed to be a user of narcotics, you would not turn down a proposition from such a person, which might involve the turning up of a source of supply of narcotics and the apprehension of higherups, you would not turn down that kind of a proposition, would you?

Mr. Davis: I make three objections to that, your Honor. First, it is compound and complex and unintelligible; second, it is argumentative; third, it is incompetent, irrelevant, and immaterial.

The Court: The objection is sustained.

Mr. Abrams: Exception.

Q. But you did turn down the proposition here that they made to you of turning up the source of supply of narcotics and some big shots, you did turn down that proposition? A. I did."

The witness testified further: Agent McGuire did very [105] little talking while I was talking to the defendant Brady. I asked Brady how much he had paid for the heroin, U. S. Exhibit 1 in evidence, and he told me \$300. I don't recall McGuire say-

(Testimony of Joseph A. Manning.)

ing to Mr. Brady, "Larry, I guess you paid about \$300 for that stuff."

Mr. Abrams: Q. Isn't it a fact Mr. McGuire was asking questions in such a way as to draw from Mr. Brady simply a 'Yes' or 'No' answer, or a nod, or gesture of some kind?

Mr. Davis: The same objection.

The Court: He may answer.

The Witness: A. I was doing the questioning, not Mr. McGuire.

Mr. Abrams: Q. Wasn't Mr. McGuire putting words in Mr. Brady's mouth?

Mr. Davis: I object to that as argumentative.

The Court: Sustained.

Mr. Abrams: Exception.

Q. Isn't it a fact, Mr. Manning, that Mr. Brady said something like this to you, or in your presence: 'If you are going to file some charge here why don't you file it against me and leave my wife and the car out of this thing?'

A. He didn't make any such statement as that. He wanted to—I will take that back. He did ask me—in the beginning, in his proposition to help he wanted himself and his wife released, have the car returned if he did anything to help in detecting and apprehending others."

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The Government rested its case in chief.

"Mr. Abrams: Your Honor, I want to make the usual motion for directed verdict on the ground of

insufficiency of the evidence, and furthermore, to the improper admission of the evidence in this case of Government's Exhibit 1, on the ground it is a violation of the constitutional rights of [106] the defendants. May I have just a few minutes to present the matter to your Honor in the absence of the jury?

The Court: The jurors may retire.

(Thereupon the jury retired from the courtroom.)

Mr. Abrams: Your Honor, I did not present this point to you by way of argument in the previous trial of this case, for which I think I was negligent. The more I think of this point the more I think I am right in my contention, and I think I should present the matter to you a little more fully. I raised several points here, one on the question of search and seizure, the violation of constitutional rights of the defendants; another point on the insufficiency of the evidence.

On the first point of the constitutional rights of the defendants of search and seizure, we know the courts have ruled that the Federal officers cannot make a lawful arrest, or an arrest is not lawful unless the officer at the time of the arrest—let me put it this way: The arrest, first of all, must be lawful. and a search must be made subsequent or following the arrest, as an incident of the arrest, at or about the time and place of the arrest, in order to be upheld under our authorities.

Now, a lawful arrest is one where the officer has



a warrant of arrest properly obtained, or where he has reasonable or probable cause to believe that a felony has been committed by the defendant, or where he observes a felony or a misdemeanor committed in his presence. I think that is the more general rule of law pertaining to lawful arrest. Here the question comes down to the fact whether or not the officers had reasonable and probable cause to believe a felony had been committed by the defendants, or did the [107] officer see a felony committed in his presence, or a misdemeanor. I don't think any of those things, under these circumstances, exist, your Honor. The testimony here reveals subsequently that the officers followed the Bradys out to Van Ness Avenue and back into the garage, and on entering the garage they immediately placed the two defendants under arrest. There isn't much more to it than that. Following which the officers found a package on the floor. Let's take it at its worst. Two officers say they saw a package drop as they were getting out of the car. The officers did not know what was in that package. They did not know anything about the package. They did not know its contents, or have any reason to know anything about its contents. The package in appearance was nothing more than any other package which could contain anything of a lawful nature. The officer did not discover what was in the package until after he had opened it, until after he had violated the constitutional rights of the defendant.



What an agent discovers after an unlawful arrest and search, what it may bring to light does not avail the officer anything and he can't make any use of it. It should be quashed. So that all the officers saw or knew before they arrested the defendants, they saw them drive out to Van Ness and Lombard, saw him let her out, and pick her up and bring her back to the garage, and saw a package drop, together with the fact they knew the defendants, and the defendants knew them. Under the cases, that is not proper information, your Honor; that is not reasonable or probable cause to believe there is a crime, or a felony has been committed by these defendants.

(Further argument.) [108]

The Court: The motions and each of them will be denied.

Mr. Abrams: Exception.

The Court: Bring back the jury.

(The jury was then returned to the courtroom.)

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box?

Mr. Davis: Yes, your Honor. If the Court please, may your Honor's ruling on the motions previously made in the presence of the jury be ruled upon in the presence of the jury?

The Court: The motions, and each of them, will be denied.

Mr. Abrams: I presume my exception is in the record."

## TESTIMONY OF IRVING COWAN

For the Defendants.

Irving Cowan, produced as a witness on behalf of the defendants, having been first duly sworn, testified substantially as follows:

My name is Irving Cowan. I am presently in the custody of the Sheriff of the City and County of San Francisco serving a one-year sentence on a charge of possession of narcotics, heroin, having been arrested by Agent McGuire of the Federal Narcotics Bureau in February of this year. I was originally booked on a Federal charge, which was later changed to a State charge. When I testified in this case at the last trial, my own case was then pending, and at that time I was out on bail. I am now serving a one-year sentence. I was arrested by Agent McGuire on Polk and Turk Streets, San Francisco, during the month of February of this year, and taken to my room at the Embassy Hotel. When we got there, my wife and Mrs. Brady, the defendant here, were at the room in the Embassy Hotel. While we were at my room [109] Mr. Brady, one of the defendants, telephoned. Agent McGuire asked to speak to Mr. Brady, and upon doing so told him to come up to the room. Mr. Brady came up. My wife and I had had an appointment to have dinner on that evening with Mr. and Mrs. Brady. That was the reason for Mrs. Brady being at the room. I have known Mrs. Brady between two and three years, and I have known Mr. Brady between three and four years. I

(Testimony of Irving Cowan.)

was employed as manager of the Continental Club, here in San Francisco, owned by Mr. Brady, and also acted in the same capacity for Mr. Brady at his place of business in Reno, Nevada. I lived in their home in Reno and I acted as the best man at their wedding. Subsequent to my arrest I met Agent McGuire quite a few times, mainly during the time my case was pending at the Hall of Justice, San Francisco. In a conversation had with him on the afternoon of my arrest he told me, "You are just a small fry. We don't want people like you. Why don't you do what we tell you to and you will get very little time, if any at all. Just do as we say." I asked him what he wanted from me. He asked me to sign an affidavit stating that the package that I had in my possession at the time of my arrest was for the defendant Brady. I told him I could not say that, because Brady was not involved and knew nothing about it. He said, "Well, if you want to be a damned fool, go ahead. That's the way we arrested you; somebody put their finger on you." I told McGuire that Brady had nothing to do with it. He took me to the jail and booked me. The next morning I obtained bail.

"Mr. Abrams: Q. Go ahead.

A. On the morning that I appeared at the Hall of Justice Mr. McGuire met me in the hallway before we went into court. He said, 'Irving before they bind you over for Superior Court,' he said, 'this is the time for you to do something for us.'

(Testimony of Irving Cowan.)

He said, 'If you do [110] what we want you to we will be lenient with you; if you don't,' he said, 'we will go on the stand and tell the judge you are a peddler; we will get you as much time as we want.' I said, 'Mr. McGuire, I don't know what I can do for you. These people you want me to say anything against have nothing to do with this.' He said, 'If you want to be a damn fool you will just have to do that.' So I went into the preliminary examination. Another time up there he came up to me on the morning——

Mr. Davis: Just a minute. What day is this?

A. The morning after Mr. Brady's arrest."

The witness testified further: Every time I saw Agent McGuire that is what he kept telling me, that he wanted me to involve Brady.

"Mr. Abrams: Q. Let me ask you this: Before Mr. Brady's arrest did Mr. McGuire ever make any threat in front of you to arrest Mr. Brady?

A. Yes, quite often. He told me, he said, 'I am going to get him.'

Mr. Davis: When was this?

A. Several occasions.

Mr. Davis: Let's get the first one. Who was there?

Mr. Abrams: Q. As best you recall; state it as best you recall.

A. Well, it was up in the corridor, there, whenever he talked to me; he talked to me every time he saw me.

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(Testimony of Irving Cowan.)

Mr. Abrams: Q. Where did it take place?

A. In the corridor of the Hall of Justice.

Q. Who was present?

A. Mr. McGuire and myself.

Q. Approximately how long after the time you were arrested?

A. Well, they started——

Q. I am talking about this conversation, the conversation of [111] this threat that I am talking about; approximately how long after you were arrested?

A. The first time was when we left the hotel, when he took me to the jail and booked me.

Q. What did he say then?

A. He said, 'I am going to get Brady.' He said, 'If you don't help me I will get him by myself.'

Q. What is the next time?

A. Next time was when I saw him out in the corridor, he called me up one day.

Q. Called you up one day?

A. Yes.

Q. When was that? How long after you were arrested?

A. A week or ten days before I appeared; I was at my hotel room.

Q. At your hotel room where?

A. At the Commodore.

Q. You recognized his voice on the phone?

A. He told me it was him.

Q. What did he say?

A. He said, 'Are you ready to do as I asked you to?' I said,—first, he says, 'Did you talk to your



(Testimony of Irving Cowan.)

attorney?' I said, 'No, I have not.' He said, 'Well, are you ready to do as I asked you to?' I said, 'No, I can't do that.'

Q. At any other time did he tell you anything about arresting Brady?

A. Yes. He told me up in the corridor when I met him——

Q. At the Hall of Justice?

A. At the Hall of Justice.

Q. About how long after the time you were arrested?

A. Oh, around three weeks, two weeks afterward.

Q. What did he say to you then?

Mr. Davis: Who was present, if anyone?

Mr. Abrams: Who was present?

A. Mr. McGuire and sometimes Mr. Grady.

Mr. Davis: Sometimes. We are talking about one specific conversation. Which one? [112]

Mr. Abrams: All right. Never mind arguing with the witness.

Mr. Davis: I am not arguing with him.

Mr. Abrams: Q. Do you recall anyone else being there at the moment of this conversation I am asking you about? A. No.

Q. Just you and Mr. McGuire?

A. Yes.

Q. What was said then?

A. He told me he was out to get Brady and he was going to get him, and if I didn't help him it would be just too bad for me, and he would get



(Testimony of Irving Cowan.)

him sooner or later, and if I was smart I would help myself and help him, too.

Q. At any time did he indicate to you when he would get him?           A. No."

The witness testified further: In the corridor of the Hall of Justice when I appeared for one of my preliminary examinations, before I was sentenced, Agent McGuire said to me, "Before you go to trial I will have Brady in jail with you." On the morning following Brady's arrest Agent McGuire and I had another conversation in the Hall of Justice. I had to appear in court that morning. Agent McGuire said to me, "Well, I got Brady last night." He said, "He lost his Cadillac. It looks like he will get a lot of time." He said, "Why don't you wake up? You can't do Brady any harm now." He said, "Why don't you go before the grand jury and tell them where you got that package, and that it was for Brady?" I said, "Well, I couldn't do that." I said, "I would only be involving him in something he had nothing to do with." About that time my attorney came up and he said, "What's the matter with that silly bastard? Why don't he do what we want him to?" He said, "If he don't he is going to get a year in jail. Otherwise we will see he gets three months." My attorney [113] said, "Well, I couldn't hardly think a man would do that." He said, "Well, I'll go on the stand," he said, "and just rap the devil out of him," and they went off to the side to talk some more, and Mr.

(Testimony of Irving Cowan.)

Grady came over to me and he said, "Why don't you quite being a damn fool?" he said. "You can walk into the Post Office Building," he said, "and nobody will see you go in or out. All you have to do is go up and testify before the grand jury, nobody will know anything about it." He said, "Nobody will know you ever done anything like that." I *told* I would be sending an innocent man to jail and I am not the type to do a thing like that. That about covers all the conversations I had with Agent McGuire. Agent McGuire appeared as a witness and testified against me at my trial in the State court.

"Mr. Abrams: Q. Did he state in your presence at that time to the judge in that court that you testified in this trial previously?

A. He did.

Mr. Davis: I object. I will ask, your Honor, that the witness be instructed to allow me to state my objections before he answers the questions, because it is obviously leading, and very incompetent, irrelevant, and immaterial.

Mr. Abrams: It all goes to the bias and prejudice of the witness, your Honor; the credibility.

The Court: The objection will be sustained; let it go out.

Mr. Abrams: Exception.

The Court: The jury will disregard it.

Mr. Abrams: Q. Did he represent to the judge in that court at the time of your sentence, did he state to the Court you were a peddler?

(Testimony of Irving Cowan.)

A. Yes.

Mr. Davis: I make the same objection.

The Court: Did you enter a plea? [114]

A. No, I did not. I plead not guilty.

The Court: Proceed.

Mr. Abrams: That is all along that line. Now, Mr. Cowan, incidentally, that was your first conviction, was it not, on a charge of narcotics?

A. It was."

The witness testified further: On April 4, 1944 I was living at the Commodore Hotel in San Francisco. The defendants, Lawrence and Margaret Brady, were also living at the Commodore Hotel. On that day I saw them drive into the garage across the street a little after 6:30 p. m. At that time I was standing in front of the Commodore Hotel. Brady was going to allow me to use his Cadillac automobile that night, saying that he would be back from the race track around 6 o'clock, so I was waiting in front of the hotel for Brady to return. When I saw Mr. and Mrs. Brady drive into the garage across the street, I started to cross the street to the garage. At that time I observed another car with Mr. McGuire and Mr. Grady drive up to the entrance of the garage. I immediately recognized them. This photograph you are showing me, Defendants' Exhibit D, is a picture of the front of the garage. The ramp you see there is on the downhill side of the building. At that time I saw a fellow I knew just coming out of the ramp of the garage,

(Testimony of Irving Cowan.)

or he had been standing there. I seemed to see them all at once. He tossed a package over towards the grease rack, just a little past this post shown here in Defendants' Exhibit B, which you are showing me. The package was white; it looked like an envelope or a handkerchief. I couldn't tell what it was. It was a small package. He just sort of tossed it. This man's name is Frenchy, and I had previously purchased narcotics from him. I had seen that man in that vicinity before. Whenever I bought anything from him I used to have to go to North Beach the night before, and I would meet him, [115] and after I found him I would give him the money and he would meet me on Sutter Street, close to the garage, and deliver it to me. After this man tossed that package, he started to walk out, down the street, and I tried to stop him. I didn't know what was taking place at the time. I sort of yelled at him, "Wait a minute." He said, "I'll see you later." He got in a car and drove off. The car had been parked just a little way down Sutter Street from the garage. I had seen Mr. Grady jump out of the car and grab hold of Mrs. Brady's arm. After I tried to stop Frenchy, I turned around and went back toward the garage to see what was taking place, and Mr. Grady and Mrs. Brady were standing there talking, and it seemed like they started to turn around and go back to the back of the garage when he stooped over and picked up the package. He said something. The package was a few feet away from Mrs. Brady.

(Testimony of Irving Cowan.)

When I seen him do that, I turned around and went back to the hotel and went to my room and stayed there utnil about 7:30. During that afternoon I had gone to see somebody at a card club on Eddy and Taylor Streets. I returned to the hotel between 4 and 5 o'clock. I did not see Agent McGuire in front of the hotel or in that vicinity at that time when I entered the hotel. Mr. and Mrs. Brady, the defendants, do not know this man Frenchy. The day I got out on bail after my arrest I had a conversation with Mr. Brady in which I told him I had just started using narcotics not long before this time. He was very angry with me for having done so.

#### Cross Examination

Between the time of my arrest and the time when I testified at the first trial of this case, I had around five or more conversations with Agent McGuire. Agent Grady was present at some of these conversations. At one conversation in the Hall of Justice my lawyer was present. He arrived about the middle of [116] the conversation. Agent McGuire and my lawyer stepped over to the side and had another conversation. My lawyer recounted this conversation to me, and it was in substance the same conversation that Agent McGuire and I had had before the arrival of my lawyer. The subject of all of my conversations with Agent McGuire between the time of my arrest and the first trial of this case was that Agent McGuire wanted me to testify before the Federal Grand Jury that the



(Testimony of Irving Cowan.)

narcotics found in my possession at the time of my arrest were for Mr. Brady.

“Q. On the night you were arrested, it is a fact, is it not, you left the La Salle Hotel and went over to around Broadway and Columbus Avenue?

A. I did not.

Q. You did not?           A. No.

Q. Well, it is a fact, is it not, you purchased the narcotics in the barber shop at——

Mr. Abrams: If the Court please, Mr. Davis, I presume, is now going into the facts of this man's case. It is not proper cross examination. It is not part of this case. We took nothing like that up on direct examination of this witness. Mr. Davis is examining this man as to his own case.

Mr. Davis: Mr. Abrams opened up this entire line of testimony as to what took place on the night he was arrested up in the room, the conversation had, and what was said on the street, and who was up there when he got there, and going into the bathroom and being searched. I am entitled to find out what happened.

The Court: Any testimony gone into on direct examination may be inquired into on cross examination.

Mr. Davis: Q. That is a fact, is it not?

Mr. Abrams: Exception. [117]

Mr. Davis: Q. That on the night you were arrested you purchased the narcotics over in a barber shop around Columbus and Broadway?



(Testimony of Irving Cowan.)

A. That's right.

Q. It is a fact, is it not, you purchased them from a man by the name of Tea John, who is known as Tea John?

A. I don't know the man's name for sure.

Q. Did Mr. McGuire ever tell you that the man you had bought from was nicknamed 'Tea John'?

A. He told me some name there.

Q. Isn't it a fact, Mr. Cowan, that all of those conversations you had with Mr. McGuire, what he asked you to do was to go in and testify that you had purchased the narcotics from Mr. Tea John, and that he did not ask you to come in and testify that you had bought them for Mr. Brady?

A. No, he did not. He asked me to say they were for Brady.

Q. Did he ask you at any time to come in and testify, or even to tell him that you had purchased the narcotics from this Tea John, whom he named and whom he suspected to be a peddler?

A. Yes.

Q. He asked you that?

A. He asked me—he never mentioned the name but once, but he always referred to him as "parties."

Q. So according to your testimony, what he asked you was to come in and testify that on that night you had gone to a place to purchase narcotics from some definite person and that you were taking them back to deliver them to somebody, namely, Mr. Brady?

(Testimony of Irving Cowan.)

A. I did not understand you. \* \* \* Yes."

The witness testified further. On the afternoon of April 4 I left my room in the Commodore Hotel at about 3 o'clock in the afternoon, or a little earlier, and went to Eddy and Taylor Streets. I returned to my room in the hotel sometime between 4 [118] and 5 o'clock. I stayed there until 6:30, when I came down from my room and waited in front of the hotel for Mr. Brady to return so I could borrow the Brady automobile to use on that evening. I observed Mr. Brady, accompanied by Mrs. Brady, drive his car into the garage. At that time I did not see the Government car, but as I started to walk across the street I noticed it pull into the garage. I did not recognize anybody in the Government car until I got a little closer. At this time I saw Frenchy, whose full name I knew at one time but do not know now. I did not know his full name at the last trial, either, of this case. When I first saw Frenchy, I was between the car track and the sidewalk. At that time he was making the turn from the garage, coming out the ramp. As he was coming right out of the ramp I saw him toss a package. The package traveled around ten feet or so. At this time both the Brady car and the Government car were in the garage towards the back. I did not see any people moving around the cars, but Mrs. Brady was up near the front of the garage. I saw Mr. Grady standing holding Mrs. Brady's hand, arm, talking to her. It all seemed

(Testimony of Irving Cowan.)

to happen all at once. Frenchy threw the package and kept walking around the corner toward his car. That is when I tried to stop him and talk to him. I did not see where the package landed, but it was in the direction of the grease rack. Mr. Grady stooped over and picked something up within a few feet from Mrs. Brady.

“Q. You don’t know where this package that you saw tossed landed in the garage?

A. Well, I didn’t see just the exact spot, I mean.

Q. You don’t know whether it landed near Mrs. Brady or away from her, or where it landed?

A. Well, it was in that general direction.

Q. In that general direction?

A. Yes. [119]

Q. All you know is you saw a package tossed, you don’t know where it landed?

A. That’s right.

Q. Then you saw Mr. Grady stoop and pick up something from the floor?

A. A few minutes later, yes.

Q. You don’t know, of course, whether what he picked up was the package? A. Pardon?

Q. You don’t know, of course, whether what he picked up was the package?

A. No, I don’t.” [120]

TESTIMONY OF LAWRENCE WILLIAM  
BRADY

One of the defendants.

Lawrence William Brady, one of the defendants, produced as a witness in his own behalf, having been first duly sworn, testified substantially as follows:

My name is Lawrence William Brady. I am 38 years old. I formerly operated and conducted a business in Reno, Nevada. It was a combination of a night club and had gambling, slot machines, a bar, which are all legal in Nevada. Mr. Cowan was employed by me in the capacity as manager. He also resided with me and appeared as the best man at my wedding. I formerly operated a business here in San Francisco known as the Continental Cocktail Lounge, at 127 Ellis street. Mr. Cowan worked for me there for about eight or nine months, as manager. I joined the Merchant Marine on February 9, or thereabouts, 1943. I sailed on a ship from San Francisco on approximately that date. The ship was destined for Guadalcanal. En route I was ruptured in the line of duty one evening while some oil or gasoline barrels got loose in a rough sea, and a gang of us had to go out and make them fast to keep them from rolling all round. I got ruptured on my left side. As I fell I hurt my back at the same time. When the ship reached Honolulu, pursuant to doctor's orders I left the ship and received hospital treatment at Honolulu. I was told that I needed an operation, and was advised to return to San Francisco to the Marine

(Testimony of Lawrence William Brady.)

Hospital to receive medical care on account of the crowded space and limited facilities which were greatly overtaxed in Honolulu by reason of the return of men who had been wounded overseas. I was given passage back to San Francisco on a Liberty ship, and upon my arrival in San Francisco went to the Marine Hospital, where a week or so later I was operated on by a Dr. Hunt at the Marine Hospital. I was convicted of a felony in 1925, when I was 19 years old. The felony was [121] robbery. I was also in some difficulty in Reno, Nevada, where I pleaded *nolo contendere* on the advice of counsel. I do not know whether that charge amounted to a felony. The trouble grew out of a fist fight that ensued in the Bank Club, Reno, Nevada. There was no arrest made at the time, but subsequently a charge was placed against me for possession or transportation of a gun in interstate commerce, a Federal charge. After pleading *nolo contendere* I was placed on probation for one year, at which time, according to the probation officer's report, the case would be dismissed. My counsel advised me to plead *nolo contendere* and accept this probation. At the time of my arrest on April 4, 1944, I had a number of mutual tickets issued at the Bay Meadows race track in my possession. I also had a substantial sum of money on my person. Since I have been unable to work, in order to keep up in funds I have been commissioning bets on horse races, and naturally I have to have large amounts of money with me in order to work. The



(Testimony of Lawrence William Brady.)

bets I had been making were for other people. It was other people's money that I had. The mutuel tickets that Mr. McGuire took out of my pocket were dated April 4th, the same day of my arrest. On that day I was driving a Cadillac 1941 sedan, Model 63. It was my car and fully paid for. Mr. McGuire took that car from me in the garage that night, and I imagine it is still in the custody of the Government, as they have not returned it to me. On April 4th I was living at the Commodore Hotel, on Sutter street, with my wife. I kept the car in a public garage across the street at 840 Sutter street. I know Mr. McGuire, the narcotics agent. I first met Mr. McGuire at the Sir Francis Drake Hotel, while I was residing there for a couple of weeks, in December of 1942 or January of 1943. At that time Mr. McGuire accused me of having narcotics in my possession, and he searched my room in the Sir Francis Drake [122] Hotel. He did not find any narcotics in my possession, or in my hotel room. On April 4, 1944, I returned to the Commodore Hotel from the race track at approximately 6:00 o'clock. I put my car in the garage across the street from the Commodore Hotel and immediately went to my room in the hotel. My wife was there. I told her that I was tired and that I was about to retire in order to get a good night's rest. She said, "I was in the beauty shop this afternoon and I heard a woman say there was an apartment for rent out on Van Ness Avenue and Lombard." She did not say how far. At that



(Testimony of Lawrence William Brady.)

time she just said, "Out at Van Ness Avenue." She said, "Will you drive me out there before you retire?" She said, "We have been trying for quite some time, we are living in a hotel and trying for some time to get an apartment where we can cook for ourselves and make coffee and things, we are tired of living in hotels, we have been looking around for an apartment." I was only too glad to drive her out there. It was a possibility we could have an apartment. We left the hotel, went to the garage, got the automobile, and drove out to Van Ness and Lombard. While driving to that point I looked in the rear view mirror, and in my own mind I thought I seen Mr. McGuire's green coupe that he usually drives around in, and I mentioned it to my wife. She turned around and she agreed with me that it looked like the same car, and we both agreed that it could be the same car. I made several different turns, sort of a zigzag course. I did that purposely to determine whether or not this car was following me. We were satisfied in our own mind that we were being followed. When we got to the corner of Van Ness and Lombard I stopped the car. My wife got out of the car. I had been having trouble with the hood of my automobile. The catch that locked the hood had been broken and it caused the hood to rattle and jump up and down. I [123] had had it welded by a mechanic once before, but the trouble occurred again, so that I was desirous of having it repaired. When

(Testimony of Lawrence William Brady.)

my wife got out of the car at Van Ness and Lombard I told her that I was going to drive to the corner of Van Ness Avenue and Bay street to see if I could get a mechanic to fix the car while she was looking at the apartment. I told her that I would not be gone long. I said, "I am going to see if I can get this hood fixed while you are looking at the apartment. I'll drive up here and see if I can get it fixed. Be back as soon as you can, don't be too late, because I promised the car to somebody." I drove to Van Ness Avenue and Lombard, but I was unable to find a mechanic. I made a U-turn at that point and returned to Van Ness Avenue and Lombard, where my wife was standing on the corner. I made a left-hand turn, stopped and picked her up, and drove back to the garage, drove into the garage. I drove approximately two-thirds of the way back toward the back part of the garage and then I stopped the car. It was past the place where the office is in the garage. I did that deliberately in order to get out of the way so I wouldn't be blocking traffic at the gasoline pump. I was going to try to fix the hood, myself. There was no mechanic on duty at that time in the garage. I asked my wife if she would go across the street and tell Cowan that I was having trouble with the hood, that I was attempting to fix it, and if Cowan wanted the car to come over to the garage. My wife got out of the car. I then got out of the driver's seat and walked around to the front of the car and was attempting to lift up the hood, or attempting to get

(Testimony of Lawrence William Brady.)

the hood released so I could get it up and either fix it or get it back down, when Mr. McGuire walked up, accompanied by Mr. Ferguson. Mr. McGuire, at the hood of my car, started diving through my pockets. [124]

“Q. What?

A. Starts reaching his hands into my pockets and says, ‘Where is it, Larry, where is it? Come on, we got you. Give it to us now. Where is it?’ I backed away. I says, ‘Where is what, Mr. McGuire? What are you doing, putting your hands in my pockets?’ He says, ‘You know what we are talking about. Come on, where is it? Give it to us.’ I said, ‘I don’t know what you are talking about, Mr. McGuire. I don’t know what you are talking about, Mr. McGuire,’ I said, ‘I don’t want you to put your hands in my pockets. Please don’t do that.’ That’s when I backed away. He mentioned something about a knife. He reached in my pocket and took out a pocket knife. I wish he would produce that. I haven’t seen it since then. It was not among my belongings in the jail. I haven’t seen the knife since. It was merely a pocket knife.

Q. How about a gun, did you have a gun?

A. No. I never have a gun in my possession, in my car, or anything.

Q. Did he search you?

A. Yes, he put his hands in my pockets, all of my pockets, every one of them; maybe with the exception of the little watch pocket, for something that he didn’t find. He took out my money, the

(Testimony of Lawrence William Brady.)

bills, and seemed to be so cautious of the bills. He said, 'I have been accused before, we have to be awfully careful of this money,' but took the money, and pulled out my handkerchief and wrapped it in there. He says, 'There is your money, so you won't give me any argument about the money.' He put it back in my pocket, my handkerchief back in my pocket, this pocket (indicating). He went through all my pockets and my wallet and took this knife, as I said.

Q. Were you handcuffed?

A. Yes. Mr. Ferguson put those—while he was going through my pockets—I had [125] been warned that Mr. McGuire wanted to arrest me, and had been trying to arrest me, and was going to arrest me. I was told that, and so when he started putting his hands in my pockets I asked him, I said, 'Let me see your hands?' He said, 'What are you doing?' We were having quite a little tussle there about him putting his hands in my pockets. I said, 'I don't object to you putting your hands in my pockets, or searching me.' I said, 'All I want to do is just see your hands.' He said, 'Yes. What are you trying to insinuate?' I said, 'I am not saying anything about that, Mr. McGuire, I am just merely trying to be careful with you and asking you to see your hands. Then you can go through my pockets and search me completely.' Then he insisted that Mr. Ferguson put the handcuffs on me, so the handcuffs were put on.

(Testimony of Lawrence William Brady.)

Q. Did you hear Mr. Grady shout out anything around that time?

A. Well, yes. After all of that transpired, all of that had happened there in front of the car and the handcuffs were placed on, Mr. Grady hollered something, I presume it was Mr. Grady, 'O.K., Mac, I have got it,' or words to that effect. Or, 'O.K., here it is, I got it,' something to that effect.

Q. How long a time elapsed, could you estimate, before you heard that shout?

A. Well, I would say at least, it couldn't possibly be less than four or five minutes. From what took place in the conversation and the searching of my pockets, it was at least four minutes, at least four minutes, possibly five.

Q. Were you then taken to the front part of the garage, where Mrs. Brady and Mr. Grady were?

[126]

A. Yes. Immediately following Mr. Grady hollering to the back, McGuire and Agent Ferguson took me up to where Mrs. Brady and Mr. Grady were standing, and he handed Mr. McGuire a white package, said something, 'Here it is,' or 'I seen her throw it on the floor,' or 'I seen it on the floor,' words to that effect. I don't know just exactly what he did say, but he handed the white package to him, and McGuire first showed it to my wife and said, 'Did you drop this, Margaret?' or 'Is this yours?' 'I don't know anything about it,' she said; 'I absolutely don't know anything about it. It isn't mine, and I never seen it before.' Then he turned to me



(Testimony of Lawrence William Brady.)

and he says, 'Is this yours? Do you know anything about this, Larry?' I says, 'I absolutely don't know anything about it, I have never seen it before, I haven't anything to do with it.' So then he says, 'Well,' he says, 'this happens to be narcotics and I am placing you under arrest, and your wife under arrest, and you lose the car.' "

The witness testified further: My wife and I were then taken to our room in the Commodore Hotel, across the street, by Mr. McGuire, Mr. Grady, and Mr. Ferguson. The room was searched completely by the officers. I emphatically denied that I had bought the narcotics, U. S. Exhibit 1 in evidence, on Van Ness Avenue for \$300. Mr. McGuire was the one who made that suggestion.

"Q. How did he suggest it to you?

A. While Mr. Grady and Mr. Ferguson were searching the bathroom and the suitcases in the closet, and everything, Mr. McGuire sat down on the bed and he said, 'Well, now, Margaret'—meaning my wife—'you know you are on the spot in this case. You are the one that is in bad. Mr. [127] Brady hasn't been found within 60 feet of this stuff. This stuff was picked up right next to you and the agent said he seen it falling on the garage floor.' He said, 'You are the little girl that is on the spot; he isn't. Then he says, turning to me, he says, 'If you are half the man I think you are you ain't going to let this little girl ride the beef on this. No use of you both going down.' I said, 'Well, Mr. McGuire, you have been telling people you are going



(Testimony of Lawrence William Brady.)

to get me, you are taking my car away from me and you are going to put me in jail. Somebody has convinced you I am a narcotics user. No matter what I can do I can't prove to you, or convince you, I am not a user, that I have nothing to do with narcotics, so I am the one you are after. Why do you want to take and embarrass my poor little wife, and harass her, and have her go down there and on trial and cause her all this embarrassment? My wife is innocent.' My wife was on the spot, my poor little wife right there, like he said.

Q. Don't get excited now, Mr. Brady.

A. He turned the whole thing around and says I was trying to get leniency for myself. I was not thinking of myself. I was not found within sixty feet of the package.

Q. You say he said something to you, something about \$300?

A. He said, 'The price of this stuff now, you must have paid at least \$300 for that.' I said, 'I never paid anything for it.' I said, 'I have never seen the package before; I don't know anything about it; I have nothing to do with narcotics.' I said, 'You know, you searched my room in the Sir Francis Drake Hotel a year and a half ago, you never found any narcotics and you got me in front of people there, you met me in the lobby of the hotel when I was going out with a suit- [128] case in my hand, my wife and I.' He says, 'Somebody told me you are a user of narcotics.' He said, 'Larry, you know——' He talked to me like I was

(Testimony of Lawrence William Brady.)

his brother. He said, 'Larry, you know I have no search warrant, or nothing, but,' he says, 'if you are not a user you should not have any objection to us going up and looking through your room, your personal belongings. If you are not a user you will want that. You will want to declare that.' I said, 'I certainly do, Mr. McGuire, if that is the case.' I said, 'This is a little embarrassing here in the lobby, and I would much rather go up to my room and you can search it thoroughly and satisfy yourself there is no narcotics there, and I don't use narcotics.' So we went up to my room. I give him my full permission to go through the room. He also said, 'Well, if I don't find any narcotics I will know somebody is razzing me; I will have your word you are not a user of narcotics, and it is an awful gag and we will leave it go at that.' He went to my room and searched it, even took the light sockets off the fixtures and took everything apart, looked out in the hall, looked up in the cornices around the ceiling, and everything, and found absolutely nothing."

The witness testified further: During my conversation with Mr. McGuire, in my wife's presence, following our arrest, and upon being taken to the Commodore Hotel, I asked Mr. McGuire to make the charge against me, even though I was not found within sixty feet of the package. I made that request in an effort to have my wife spared the disgrace, embarrassment and humiliation of having to face this charge. Mr. McGuire informed me that

(Testimony of Lawrence William Brady.)

he was without authority or power to grant my request. He said that the District Supervisor was the only person who could act on my request. He informed me that he generally booked a per- [129] son immediately upon arresting him, but in this case he would take my wife and myself to the office of the District Supervisor, in the Narcotic Bureau, at 68 Post street. Later that evening Mr. Manning entered his office and I had a conversation with him. I did not tell Mr. Manning that I had bought the narcotics, U. S. Exhibit 1, in evidence, on Van Ness Avenue and paid \$300. I did not offer to turn in a source of supply of narcotics to Mr. Manning, because I have no source of supply. I wouldn't know where to turn to buy narcotics. I do not know any big shots. I do not know any narcotic peddlers. I do not know where I could get narcotics. That is what he said to me. He asked me why I was protecting these people and letting them rob me of my money. He is the one that termed the narcotics "flea powder." Agent McGuire was the one who suggested I paid \$300 for the narcotics, U. S. Exhibit No. 1 in evidence. They turned the whole thing around. Mr. McGuire and Mr. Manning completely turned the whole thing around. At that time I denied it just as emphatically as I denied it in the garage and in the room, and just as emphatically as I am denying it now. I never purchased narcotics. I didn't see narcotics. I never used any narcotics. I didn't know anything

(Testimony of Lawrence William Brady.)

about the package, and I don't know anything about it now. The first time I ever saw that package, U. S. Exhibit 1 in evidence, was when Mr. McGuire showed it to me in the garage after Grady had called up to where we were standing. The day after Mr. Cowan was arrested he got out of jail on bail, and he came to me and told me that Mr. McGuire thought that the stuff found in Cowan's possession was my stuff; he accused Cowan and said, "Why don't you tell me that this stuff belongs to—" me. He offered to let Cowan off light on the charge, or let him go, or make it easy for him if he would make the statement that the stuff found [130] on Cowan belonged to me and stated where the stuff came from.

When Cowan told me that I said, "I can understand McGuire saying that, because McGuire has already come up to my room once before, a long time ago, and searched my room thoroughly for narcotics; I can understand him saying that. I know he wants to get me; somebody has convinced him I am a user, and nobody in the world can convince him differently." I am not a user of narcotics. I do not use narcotics in any way, shape or form. I never have and I hope I never will. At the time Cowan worked for me I am positive he did not use narcotics. He was a good, capable businessman. He was a good manager. He never used narcotics. I hadn't seen him for months prior to this. He admitted, himself, it was only in the last few months that he had used narcotics prior to his

(Testimony of Lawrence William Brady.)

arrest. On the day that Cowan was arrested Mrs. Brady and I had an appointment to have dinner that evening with Mr. and Mrs. Cowan. That is how I happened to telephone to Cowan's room at the time Agent McGuire and Agent Grady were conducting a search of Cowan's room. Cowan had left word at my hotel for me to get in touch with him, which I did.

### Cross Examination

I was married two years ago the 9th of this month. I purchased the Sphinx Club, in Reno, just after my wedding. I operated that club for a few months and then moved uptown to the Barn Club. I operated the Barn Club until I got into that mess in Reno that I have previously explained here. I then sold out to my partner, came down here, and joined the Merchant Marine. That was approximately November or December, 1942. From May 31, 1940 until May 31, 1942, I had operated the Continental Club in San Francisco. That was immediately before going to Reno, Nevada, and going into business there. On returning to San Fran- [131] cisco in the early part of 1943 I joined the Merchant Marine, sailing on February 9th for Guadalcanal. I left the ship at Honolulu on account of an injury, and returned to San Francisco, where I was hospitalized in the Marine Hospital. I was in the hospital until March 30, recuperating from a hernia operating. I stated that when I received the rupture I fell, and also noticed that my back hurt.



(Testimony of Lawrence William Brady.)

I felt that as soon as the hernia had been corrected I would be relieved of the backache, but I wasn't. The doctor told me not to do any heavy work for a while and give the rupture a chance to really heal and get back together so it wouldn't break open again while lifting or something. Since being discharged from the Marine Hospital I have received heat treatments from a doctor in the 450 Sutter Building, and around the first of this year I was confined to my bed for a few days suffering from the flu. I have also had some X-ray pictures of my back taken at the St. Francis Hospital. In 1925, when I was convicted of a felony I used the name of Bunger, which was an alias. The other difficulty I had in Reno in 1942 to which I pleaded nolo contendere was a Federal charge. After making the trip to Van Ness and Lombard street and letting my wife out of the car, and continuing on to Van Ness and Bay street, making a U-turn, picking up my wife at Van Ness and Lombard street and returning to the garage at 840 Sutter street, I would judge that it was approximately seven o'clock when we were in the garage. I would say it was quarter after seven or so when we reached the hotel room in company with the narcotics officers. We went from the hotel room to the office of the Narcotic Bureau. While waiting for Mr. Manning we went out and had something to eat and returned to the narcotics office again. Mr. Manning arrived around 11:00 or 11:30. At that time I had a discussion with Mr. Manning about this transaction. All I



(Testimony of Lawrence William Brady.)

had to say was that [132] I denied it all the way through. I denied having anything to do with the package; I denied any knowledge of the package. I denied it in the garage, I denied it in the hotel, I denied it in Manning's office, again in the restaurant, and back in Manning's office, in the outer office, and in the inner office with Mr. Manning. I explained to Mr. McGuire why we had driven out there to Van Ness and Lombard, that my wife wanted to see a vacant apartment, that I had dropped her at the corner and driven to Bay and Van Ness and back, picked her up, and drove to the garage. I explained I had nothing to do with the package, and knew nothing about it. I did not tell Mr. McGuire in the hotel room that I could lead him to some very big peddlers and dealers, and that I was willing to do that, provided Mrs. Brady and myself were not arrested and the car was released. When Mr. Manning told my wife, "You are the one that is on the spot, you are the one that is going to have to ride the beef for this thing"—those were his exact words—and when he said, "Unless you are half the man I think you are, Larry, you won't let this little girl do this for you." I said, "Yes, I am the one you have been after; I am the one you threatened and told other people you were going to get, and take my Cadillac car away, and put me in jail, you were going to get me regardless of how." Then I said, "Why should you take my little wife down and embarrass and shame and disgrace her?" I said, "I am the one you want, book the charge

(Testimony of Lawrence William Brady.)

against me. Let me ride the beef for her instead of, as you say, let her ride the beef for it." I did not mention anything about any peddlers; I didn't know any big narcotic peddlers. I have nothing to do with narcotics or peddlers. I do not know any addicts, with the exception of Cowan, who has admitted he is an addict to the Court. I do not associate with addicts. If people are addicts I will say I don't know it. If I know they are addicts I deliberately stay [133] away from them, because I don't care any more about narcotics or dope than the average other citizen does. I hate them just as bad, and I told that to Mr. Manning and to Mr. McGuire. The only reason we went to Mr. Manning's office was upon Mr. McGuire's suggestion that we get Mrs. Brady released. I at no time ever asked for an agreement or asked anything for myself. I was trying to keep my wife from being arrested and disgraced and humiliated, and that is merely the reason we went down to Mr. Manning's office in the first place. I am not a narcotic addict, nor have I ever been. With the exception of Mr. Cowan, I do not know any addicts. If I know anyone who is an addict, I don't know he is an addict.

I have never undergone treatment for the cure of the narcotic habit. On April 6th of this year I was admitted to the Patterson Sanitarium, in San Leandro under the name of W. L. Baldwin, for a nervous breakdown. My wife was admitted with me, under the name of Alice Baldwin. She had a

(Testimony of Lawrence William Brady.)

side ailment. We both went over there for a rest cure. If you will look at the books you will see it. We were both admitted for a nervous breakdown. That was right after the arrest, and I was so ashamed and so disgraced that I didn't even want to see myself. While my wife and I were in the Patterson Sanitarium, to my knowledge, we did not receive any narcotics administered to us. I entered that sanitarium on April 6th and left on April 11th. My wife was there from April 6th until April 16th. She had side trouble.

#### Redirect Examination

We entered the Patterson Sanitarium under the name of Baldwin simply because we were both so ashamed and disgraced over this narcotic charge. I didn't want to see my friends. I wanted to get away. My wife had a side trouble, I don't know just what it was, the doctor there didn't seem to know, but it was giving considerable [134] trouble. When we entered the hospital we signed as entering for a rest cure. That was a day or so after the arrest on this charge.

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#### TESTIMONY OF HESS MOSKOWITZ.

For the defendants.

Hess Moskowitz, produced as a witness on behalf of the defendants, having been first duly sworn, testified substantially as follows:

(Testimony of Hess Moskowitz.)

My name is Hess Moskowitz, and I am 28 years old. I am in the Merchant Marine. I have been introduced to Mr. Brady, and I recognize Mrs. Brady. I did not know either Mr. or Mrs. Brady on April 4th of this year. On that date I was passing the garage directly across the street from the Commodore Hotel at about 6:30 or 7:00 o'clock. I had a seven o'clock appointment just about a block and a half from there, on Sutter street. As I walked past the garage, the pictures of which you are showing me, marked Defendants' Exhibits D and C, I was just about to the entrance of the garage when a coupe pulled in front of me and pulled into the garage, and a man jumped out of the coupe and grabbed Mrs. Brady's arm.

Whereupon William H. Grady, an agent of the Federal Bureau of Narcotics and the witness who previously testified, entered the courtroom and was identified by the witness as the man whom he saw grab Mrs. Brady's arm.

The witness testified further: I think the car was still moving when Grady got out of the car. I did not notice anybody else get out of that car. Grady took Mrs. Brady's arm. As he took her arm, why, she pushed his hand away and then they just stood and talked. The reason I stood and watched was that I thought maybe it was a family affair. She had a purse in her arm, I thought maybe he was going to take the purse. I don't know [135] what made me stop; it was just one of those things. When I left there were other people standing

(Testimony of Hess Moskowitz.)

around the front of the garage. Before I left I noticed Grady and Mrs. Brady talking for a while, and then he reached over and picked up a package pretty close to where they were standing. The package was on the floor. I didn't see the package but it looked like a small package. I would say he picked it up four or five feet from where Mrs. Brady was standing. There were three men at the rear of the garage, which was quite a ways back, and Grady said in a loud voice when he picked up the package, I don't remember the exact words he said, it was something like, "I have got it," or "I have got her," something like that. Then these three men came forward to where Grady and Mrs. Brady were standing. That is when I first seen Mr. Brady; he was one of the three men who came forward. He had his hands up in the air. I started to leave, and as I walked from where I had been standing I heard one fellow, he was a pretty good sized fellow, say, "You are under arrest," or "I am placing you under arrest," something like that. Then I went on up the street. From the time I noticed Grady get out of the car and grab Mrs. Brady until I heard Grady shout to the men in the back, "I got it," or "I have it," and the men then started to come up, I would say it was about five minutes. I am here under subpena. I have never seen you, Mr. Abrams, before today when I conversed with you outside the courtroom just before court convened this afternoon. I had a conver-



(Testimony of Hess Moskowitz.)

sation with Mr. Brady one day at the race track about coming here to testify. When he asked me to come I told him that I didn't know how long I would be in town, that I expected to ship out any day. That is all I heard about the matter until I had been subpoenaed.

### Cross Examination

I am a Merchant Marine. My address now is 746 Geary [136] street. I have lived there about four months. Prior to that I lived at the Olympic Hotel in San Francisco approximately two months. I am originally from Omaha, Nebraska. I arrived in San Francisco during the month of December; that is, about six months ago. I have not made any trips in the Merchant Marine yet. I finished Merchant Marine School, and I have my papers. I am ready to ship out. I received my Merchant Marine schooling on a boat at a pier down here, Pier 28. I signed up right on that boat for the school. The school is run by a man by the name of Paul Stephans. There are three or four men on the boat who run the school. I am allowed to wear a uniform if I care to. I did not wear a uniform when I was going to school, and I did not live in a barracks. I lived at home. I attended school on the ship every day from eight in the morning until late in the afternoon, six days a week. I did not get paid. I received my shipping papers from the school, they call it Merchant Marine papers. I don't have my papers with me. I can go down and apply for a job as a sailor through the Union Hall.

(Testimony of Hess Moskowitz.)

I have already applied for a job on a ship. I expected to leave before now, but I expect that I will be gone within the next ten days. I attended this school for three and a half weeks. Before that my occupation was working in the fixture business, store and office fixtures. I finished the school about four months ago, after having attended the school three and a half weeks. I did not try to get a ship right away. I haven't been doing anything since I got out of school. In the latter part of the month of April I met Mr. Brady at the race track. I had not known him before. He was talking to a friend of mine at the race track. The friend's name is John Leal. After he talked to this friend of mine I asked this friend of mine if he knew Brady. He said he knew him. I told him that I had seen this fellow (Brady) being [137] arrested. I remembered I saw Mr. Brady being arrested, and I explained that to this friend. I was later introduced to Mr. Brady and he asked me to come here and testify what I saw of the transaction. I have only seen Mr. Brady twice before appearing here in the courtroom. The first time was when he was being arrested and the second time was that day at the race track when I was introduced to him by Mr. Leal. I have never met Mrs. Brady.

#### Redirect Examination

I do not have my seaman's papers with me but I do have a U. S. Coast Guard waterfront identification card with my fingerprints on it. Here it is.

(Testimony of Hess Moskowitz.)

### Recross Examination

As I walked past the garage and saw the green coupe drive into the garage and saw Mr. Grady jump out of the car and grab Mrs. Brady's arm, that is all that I remember seeing right at the time. Later on I saw other people around the front of the garage, five or six people. At the time the car drove into the garage and Grady jumped out and grabbed the woman, Mrs. Brady, I did not see anybody in that vicinity other than Grady and Mrs. Brady. I do not know Mr. Cowan nor do I know a man by the name of Frenchy. I didn't see anybody there.

### Further Redirect Examination

As I was walking up the street and got to the entrance of the garage as this coupe drove into the garage from which Grady got out, I did not see the car driving in preceding Grady's car; I didn't notice the car. [138]

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## TESTIMONY OF MARGARET BRADY

One of the defendants.

Margaret Brady, one of the defendants, called as a witness in her own behalf, having been first duly sworn, testified substantially as follows:

My name is Margaret Brady. I am 33 years old. I am the wife of Lawrence William Brady, the other defendant in the case. I do not use narcotics; I have never used them. I have never handled

(Testimony of Margaret Brady.)

them or had anything to do with them. My husband does not use narcotics, or has he ever used them. I have never discussed narcotics with my husband outside of this instance when Mr. McGuire came to our room at the Sir Francis Drake Hotel and then when Mr. Cowan was arrested. Outside of those occasions I have never spoken to him about narcotics.

On April 4th of this year, around 6:00 o'clock in the evening, I was in my room at the Hotel Commodore, where my husband and I were living. My husband returned from the race track about 6:00 o'clock. I had been in the beauty parlor that afternoon and had heard there was an apartment to rent at Lombard and Van Ness, that there would be a vacancy there. When he came home from the race track I asked him to drive me over there, because we had been looking all over for an apartment for quite sometime. He said he had put the car away already, but that he would drive me out there. We left the hotel room, walked across the street to the garage, got in the car, and drove to Lombard and Van Ness. The catch on the hood of our car was broken, so that it kept rattling and jumping up and down. It did not interfere with the vision of my husband as he was driving the car. My husband looked through the rear view mirror on our car and saw this green coupe following us that we had seen on several occasions. He called my attention to it, so I turned around and I saw it. We both agreed that it must be the officers following

(Testimony of Margaret Brady.)

us because we had seen them several times since Mr. Cowan's arrest, the same [139] car following us. While I got out of the car at Van Ness and Lombard to look at the apartment, my husband drove further on out Van Ness Avenue, looking for a mechanic or someone who could fix the hood. He asked me to hurry, that he had promised to lend the car that evening to a friend of ours, and he wanted to get the car back to the garage. The place on the corner looked to be a private residence, it is a large white house there, so I decided that I either had got the wrong address or I had misunderstood the address, because it was no apartment house there. I stood there and waited for a few minutes. I did not go in. My husband returned in about five minutes and picked me up. We returned to the garage at 840 Sutter street. It must have taken us twenty-five or thirty minutes to make the round trip and back to the garage. As we got back into the garage I got out of the car and was going across the street to see if Mr. Cowan was there, and tell him that the car was available, that we were through with it for the evening. My husband said he would try to fix the catch, himself, on the hood of the car. As I was walking toward the front of the garage and I got just about to the first post inside the garage, pretty well toward the front of the door, I don't know how many feet it was, when this car swung around the corner, quite rapidly, and as it did the door opened, and I sort of stepped aside, stopped and stepped aside just a little. I just



(Testimony of Margaret Brady.)

stepped over a little for it to go by and Mr. Grady jumped out and grabbed ahold of my arm. I had a purse in it. He said, "Just a minute, we want to see you." I took this other hand and I was pushing his hand away, and I said, "Well, that isn't necessary," something like that. He let go of my arm. I did not pass the car. I just stepped over, and I think the car must have passed me, because I was standing still when he jumped out and grabbed me. The car rolled on toward the back [140] and Mr. McGuire and Mr. Ferguson went on and stopped in back of our car. Mr. Grady and I stood there for a few minutes. I looked toward the back; we both turned and looked toward the back of the garage where my husband and Mr. McGuire and Mr. Ferguson were standing. We couldn't see them because the two cars were in the way. In a few minutes, possibly about five minutes, Mr. Grady reached down and picked up this package off the floor. He said, "What's this?" I said, "I don't know." He said, "Is this yours?" I said, "No." "It doesn't belong to you?" I said, "No." He said, "You have never seen it before?" I said, "No." He then called to Mr. McGuire and he said, "It's here, Mac, I have it," something like that. The package must have been about three or four feet, three feet, anyway, away from where we were standing, because he had to take a little step, and then he reached over; so it would be about three feet. Looking toward the entrance of the garage,

(Testimony of Margaret Brady.)

it would be on the left side, and toward the grease rack. From the time Grady jumped out of the car, grabbed ahold of me, until he shouted back there, "I have it," it must have been five minutes, because we were both standing there looking toward the back where the other men were, and as I said, there were a few words exchanged, some conversation, so it was several minutes. I would estimate it at five minutes. I had never seen that package before he picked it up off the floor. It was not in our automobile. I do not know how it got on the floor. At that time I did not know where it came from. I did not see anybody around there throw it. In a few minutes, my husband, accompanied by Mr. McGuire and Mr. Ferguson, walked up to where Mr. Grady and I were standing. My husband had been handcuffed. Mr. McGuire was searching my husband. He took out his handkerchief, wrapped his money in the handkerchief, and replaced it in my [141] husband's pocket and said, "There is your money." Mr. McGuire questioned me about the package. I told him that it was not mine and I knew nothing about it. He questioned my husband about the package. My husband denied any knowledge whatsoever of the package. When Mr. Ferguson walked up to where we were standing I believe he said, referring to seeing the package being dropped, "I saw it, too." But evidently he couldn't have, because I couldn't see him from where I was. We then went across the street to our hotel room. When we were in the room there was quite a bit of

(Testimony of Margaret Brady.)

conversation. Agents Grady and Ferguson were searching the room and Mr. McGuire was talking to my husband and I. He said:

“ ‘Well, there is no use of both of you going down on this.’ He said, ‘There is no evidence against Larry, he wasn’t within sixty feet of it.’ He said, ‘You, little lady,’ or something like that, ‘are the one that is on the spot; you were standing closest to where the package was found.’ So he turned to my husband and he said, ‘If you are half the man I think you are,’ he said, ‘You are not going to let this little girl,’ his words, ‘ride the beef for you.’ And my husband said, ‘I am certainly not, and I am the one you want, the one you have been after, been telling everyone you are going to get, so arrest me and take me down and book it against me and let my wife go, because she has not been down there, she doesn’t know what it is about.’

Mr. McGuire said he was in favor of that, too, but that he didn’t have the authority to do that without Mr. Manning’s consent \* \* \*

The witness testified further: I never told Mr. McGuire or Mr. Manning, or anybody else, that I knew that package was [142] in the car, or that I carried the package from the car to the hotel, or dropped it there. Those were the words used by Major Manning in his office. When we were in Major Manning’s office those were his words:

“He said, ‘Where did you get the package? Did you pick it up off the car seat to carry it across to

(Testimony of Margaret Brady.)

your hotel?' I said, 'I did not.' He made the remark then, 'Why did you drop it, it was pretty hot stuff to handle. Was it burning your hands,' something like that, and I told him again that I didn't have it, but he went over that several times trying to get me to say—he said that Larry, there was no evidence against him, he was not found near the spot, I was the one that was in the tough spot, that it was found closest to me; trying to make me say that I had picked it up off of the car seat to carry it across to the hotel, but I told him I hadn't seen it. Then the last thing he said to me before I went out of his office, he said, 'Well, try and use your influence on Larry, he respects your judgment, try to get him to work with us, it will be much easier on both of you. We can help you out that way.' Well, I told him I didn't know any names. I knew that my husband didn't. We would be glad to help them if there was anything that we could do, any names we could give them, but they have turned the conversation around to mean that when up in the room my husband wanted the evidence booked against him, and me released, they have turned it around so as to say that he admitted it was his, but he only asked to have me released and have it booked against him. He did not admit that it was his. So that was the only reason we went to Major Manning's office, was to see if they would arrest him and place the [143] charges against him and let him come up in court and settle it and let me go.



(Testimony of Margaret Brady.)

Q. Anything said about the car, letting the car go?

A. Yes. He said, 'Let me wife have the car and go on about her business and just arrest me, and hold me, and we will go up in court and settle it there.' "

### Cross-Examination

I deny that I threw that package on the floor of the garage on the day in question. I never had that package in my possession. I deny that I picked it up from the seat of my husband's automobile and when I saw the agents threw it to the floor. I deny that I ever had any conversation with Major Manning in which I admitted that I picked it up from the seat of the automobile and that when I saw the agents I threw the package to the floor. In the conversation with Mr. McGuire in the hotel room my husband did not say to Mr. McGuire that he bought these narcotics for \$300 from a man some place over in the vicinity of Van Ness and Lombard; my husband did not say that he wanted to make a deal in which the automobile would be released and no charges would be filed. He said he wanted to talk to Major Manning, and see if they would book the charges against him and release me. It is not a fact that my husband admitted to Major Manning that he had purchased the narcotics for \$300. It is not a fact that I admitted that I had picked up the package from the seat of the automobile and was going to carry it to the hotel, and when I saw the agents threw it to the ground.



(Testimony of Margaret Brady.)

It is not a fact that my husband's proposition was that if Major Manning would forget about this thing and not arrest us and return our car that we would work with the Narcotic Bureau and turn in some of the big peddlers in San Francisco. In my conversation with Major Manning he told me that if I could use [144] my influence with my husband to get him to give them some names, he says, "At the trial we can reach over to the judge and whisper that you folks are working for us, and it will go much easier with you," or something like that. I did not hear him say anything about mentioning that fact to the United States Attorney, who would then in open court tell the judge that we had been of assistance to the Government. I am not a narcotic addict, nor have I ever been a narcotic addict, nor have I ever received treatment for addiction to narcotics. I was admitted to the Patterson Sanitarium in San Leandro on the 6th day of April of this year under the name of Alice Baldwin, and remained there until the 16th of April, but I was not admitted to the sanitarium for the purpose of being treated for drug addiction. I was a nervous wreck and I was admitted for a rest cure, and while there I developed female trouble, and the doctor treated me for that.

#### Redirect Examination

I was in the Patterson Sanitarium from the 6th to the 16th. The doctor kept me off my feet for two weeks.

Whereupon the defendants rested.

## TESTIMONY OF FRANCIS KEARNEY

For the United States. In Rebuttal.

Francis Kearney, produced as a witness on behalf of the United States in rebuttal, having been first duly sworn, testified substantially as follows:

My name is Francis K. Kearney. I am a licensed physician and surgeon in the State of California. My office is at 930 A street, Hayward, California. I was licensed to practice in [145] 1933. I have been practicing continuously since that time. I attended University of California Medical School and graduated from there in 1933. I follow a general practice. In the course of my practice I have occasion to treat patients at the Patterson Sanitarium in San Leandro. In my capacity as a physician and surgeon I am familiar with the diagnosis of drug addiction, and also with the treatment for drug addiction. On the 6th day of April of this year I was called to the Patterson Sanitarium to treat a Mr. and Mrs. Baldwin, whom I see in the courtroom here today.

Whereupon the witness identified Lawrence W. Brady and Margaret Brady as the Mr. and Mrs. Baldwin to whom he referred.

"Mr. Davis: May the record show that the witness has identified the defendants on trial?

"The Court: The record may so show."

The witness testified further: At the time I treated them on or about the 6th day of April I diagnosed their cases as narcotic addiction. I prescribed a treatment that we have for narcotic ad-

(Testimony of Francis Kearney.)

diction which consists of the injection or administering of narcotics over a period of time with a gradually-diminishing dose. That is the treatment I prescribed for Mr. and Mrs. Brady, whom I knew as Mr. and Mrs. Baldwin.

### Cross-Examination

I know what they were admitted to the hospital for, but I do not have any record with me.

“Mr. Abrams: Have you a record of it, Mr. Davis?

“Mr. Davis: I may have. I have another witness from the hospital who should have the record.

Mr. Abrams: May I see the record?

Mr. Davis: Well, when we put the other witness on. Maybe I have some records here, if you will allow me to reopen, and I can ask to put these records in.

Q. Doctor, as a matter of fact, do you know that it is a [146] State law that when you prescribe narcotics it is necessary for you to file with the Division of Narcotics Enforcement a record of the fact that you are treating an addict and you have prescribed certain treatment? A. I do.

Mr. Abrams: I am going to object to those.

Mr. Davis: You asked for those records.

Mr. Abrams: No. I mean——

Mr. Davis: Q. Doctor, I will ask you if this is your signature appearing on these three cards?

A. Yes.

Q. I will ask you if those are the records which,

(Testimony of Francis Kearney.)

under the law, you are required to send to the Division of Narcotics Enforcement of the State of California when you have prescribed treatment for a narcotic addict and have administered narcotics?      A. They are.

Q. I will ask if these are the cards? I will read them to you. The first one reads, 'Report to Division of Narcotic Enforcement, 156 State Building, Civic Center, San Francisco, Cal.'

Mr. Abrams: Just a moment. I object to this, your Honor. I object to these. They are cards obviously sent by the doctor to the Division of State Narcotics. They are the records of the State Narcotic Division.

The Court: You asked for the record.

Mr. Abrams: I did not ask for the record. I asked for the record on their admittance to the hospital.

Mr. Davis: These records are records which are required by law to be kept by any doctor prescribing narcotics. Under the State law, he must give the name and address of the person, the diagnosis of the ailment, the amount of dosage that he has given, and the quantity and kind of narcotic. Those must be forwarded to the State Division of [147] Narcotics.

The Court: Objection overruled.

Mr. Abrams: Exception.

The Court: Proceed.

Mr. Davis: Q. Doctor, I will ask you in this case if this is the card which you furnished to the

(Testimony of Francis Kearney.)

State Enforcement Division, the State Narcotic Division, and I will read it to you:

‘Report to Division of Narcotic Enforcement, 156 State Building, Civic Center, San Francisco, Cal.

Name of Patient W. L. Baldwin Age 39  
Address 1440-16th Avenue San Leandro’—

That is the address of——

A. The address of the Sanitarium, yes.

Mr. Davis (continues reading):

‘Quantity and kind of narcotic Heroin  
Daily dosage M. S. gr IV 1st day of cutting daily’——

Will you explain, Doctor, what that means?

A. That is the drug that was used in the treatment, morphine sulphate, grains one-quarter. Does it say grains 1?

Q. It says ‘Grains’——

A. ‘Grains 4.’

Q. 4 grains.

A. 4 grains the first day, cutting daily.

Mr. Davis (continuing reading):

‘Diagnosis of injury or ailment Addict  
Has patient previously used narcotics?

A. Yes. Addicted? Yes.

Physician’s name F. K. Kearney, M. D.

Address 930 A. St. Hayward, Calif.

Date of Report April 7, 1944

Federal Registration No. 4503.’



(Testimony of Francis Kearney.)

Is this the record which you kept, or made out for Mr. [148] Baldwin, at the time he was admitted and that you filed with the State Bureau of Narcotics?      A. That is.

Mr. Davis: At this time I offer this card in evidence as Government's Exhibit next in order.

Mr. Abrams: I object to that as incompetent, irrelevant, and immaterial, and not binding on the defendants.

The Court: Overruled.

(The document was marked U. S. Exhibit 2 in evidence.)

Mr. Davis: I will read the second card here.

'Report to Division of Narcotic Enforcement 156 State Building. Civic Center, San Francisco, Cal.

Name of patient Alice Baldwin Age 34

Address 1440-168th Avenue, San Leandro

Quantity and kind of narcotic Heroin

Daily Dosage M.S. gr IV 1st day cutting daily

Diagnosis of injury or ailment Addict

Has patient previously used narcotics? Yes.

Addicted? Yes.

Physician's signature, F. K. Kearney, M. D.

Addrsees 930 A. Street, Hayward, Calif.

Date of Report April 7, 1944

Federal Registration No. 4503.'

I will ask you if that is the card which you forwarded to the State Bureau of Narcotics Enforce-

(Testimony of Francis Kearney.)

ment for Alice Baldwin at the time you treated her?      A. Yes.

Mr. Davis: If the Court please, at this time I offer in evidence this card as Government's Exhibit next in order.

Mr. Abrams: Same objection.

Mr. Davis: Q. You have identified Mr. and Mrs. Baldwin as being Mr. and Mrs. Brady?

The Witness: Yes. [149]

The Court: What is the answer?

The Witness: A. Yes.

The Court: Objection overruled. Let it be admitted and marked.

Mr. Abrams: Exception.

(The document was marked U. S. Exhibit 3 in evidence.)

Mr. Davis: Q. This final card reads:

'Daily dosage Patient unco-operative left  
Sanitarium

Diagnosis of injury or ailment Addict

Has patient previously used narcotics? Yes.

Addicted? Yes.

Physician's signature, F. K. Kearney, M. D.

Address 930 'A' Street, Haywood, Calif.

Date of report 4/13/44

Fed. Reg. No. 4503.'

Q. I will ask you if this is the card which you furnished to the Bureau of Narcotic Enforcement when Mr. Baldwin left the hospital?

A. Yes, it is.

(Testimony of Francis Kearney.)

Mr. Davis: At this time I offer this card in evidence.

Mr. Abrams: Same objection.

The Court: Overruled.

Mr. Abrams: Exception.

(The document was marked U. S. Exhibit 4 in evidence.)

Mr. Davis: That is all.

Mr. Abrams: I still ask for the record of the entrance to the institution.

Mr. Davis: In the first place, the doctor is not associated with the institution; he hasn't any record. I told you when I put the next witness on if she has the record you can see it. He is not competent to put in records of the hospital. [150]

“Mr. Abrams: That's right.

Q. Doctor, you are not connected with the hospital there? A. Not directly.

Q. You practice a great deal at that hospital?

A. I have patients there most of the time.

Q. Where is your office? A. In Hayward.

Q. Hayward? A. Yes.

Q. Is that hospital a general hospital having patients of all types?

A. No; I think it could be classed as a convalescent rest home.

Q. And handles mental cases and cases of that type. Did you examine both of these persons?

A. Yes, I did.

Q. Physical examination?

(Testimony of Francis Kearney.)

A. Well, I gave them an examination on the first day that I saw them.

Q. What did your examination consist of?

A. Blood pressure, heart and lungs, urine tests were taken.

Q. Does the hospital have admittance sheets or admittance records?

A. They have an admittance slip, I think, with the patient's name and address.

Q. Showing what they came there for?

A. No; there is no diagnosis in the admittance slip, I don't think.

Q. It doesn't show the patient's complaint?

A. I don't believe it does.

Q. Do you recall in this particular case whether it did or did not, the case of these two people?

A. No, I don't.

The Court: The answer is he doesn't know."

The witness testified further: I was contacted by these people, as I recall, before they came into the hospital to make an examination of them. Either they or their friends called me. I never saw them until I saw them in the sanitarium; they were not my patients before. [151]

"Q. On this card it says, 'Diagnosis of injury or ailment Addict.' What did you base your opinion on?

A. On the patients' admissions that they were addicts, and that is what they came there for treatment.

(Testimony of Francis Kearney.)

Q. They told you that?

A. They told me that?

Q. Both of them told you they were addicts?

A. Yes.

Q. They told you that?

A. Yes, they were both addicts, and had been taking heroin for some time.

Q. They told you that?

A. Yes. They were particularly specific, said they had been taking heroin for sometime intravenously.

Q. What do you mean intravenously?

A. In the veins.

Q. Where did they tell you they were taking it at, what part of their body?

A. In their arms, mostly.

Q. Did you examine their arms to see——

A. Yes.

Q. Whether they were taking it? A. Yes.

Q. Did you find marks of that? A. Yes.

Q. You did? A. Yes.

Q. You found punctures?

A. Evidence of puncture wounds, evidence of sclerosis of the veins, obliteration of some of the veins.

Q. Showing injections?

A. Over a period of time.

Q. Were they fresh or new or old?

A. I don't think one could say.

Q. What is your opinion?



(Testimony of Francis Kearney.)

A. My opinion would be that some were old and some were perhaps very recent.

Q. Clearly noticeable?

A. Noticeable to me, yes.

Q. Could they be noted by anybody, by the jurors looking at it? A. Yes, I am sure.

Q. They could see it? A. Yes. [152]

Q. Could you tell they were addicted to narcotics in any other way than their telling you?

A. Yes.

Q. And finding these marks on their arms?

A. Yes, I could.

Q. Did you? A. Yes.

Q. How.

A. By their clinical records during their stay in the hospital.

Q. That showed it? A. Yes.

Q. How long were they in the hospital?

A. Mrs. Baldwin stayed for, I think somewhere around two weeks, and Mr. Baldwin less than a week.

Q. You say you prescribed medicine containing heroin for their treatment?

A. No, I did not say that. It says right on the card, there, the treatment, morphine sulphate. Heroin is not available to the medical profession.

Q. It says that here.

A. Heroin is not available to the medical profession in this case.

Q. You said you prescribed morphine.

A. Sulphate.

(Testimony of Francis Kearney.)

Q. It says that here?

A. I used the abbreviation 'M.S.'

Q. You used the abbreviation 'M.S.' What is morphine sulphate?

A. It is an alkaloid of opium.

Q. You prescribed that daily?

A. I believe at first.

Q. You believe at first. How is the nervous state in the addict manifested?

A. The thing typical of the average narcotic addict is they usually come in very calm and collected, but as the drug is withdrawn from them they naturally develop nervous symptoms, characterized by insomnia or inability to sleep.

Q. Were they calm and collected when you first examined them?      A. I would say so.

Q. They weren't in a rather nervous state?

A. No. [153]

Q. Did you find anything else wrong with Mrs. Baldwin, or treat her for anything?

A. She complained of abdominal pain for a few days, but it was just previous to her menstrual period and it seemed to clear up after that.

Q. Let me ask you, Doctor: You are familiar with the cure of persons addicted to narcotics?

A. I think you better say treatment.

Q. The practice of curing.

A. I doubt if I ever have cured them.

Q. What is the length of time normally for a course of treatment?

(Testimony of Francis Kearney.)

A. According to Lambert's treatment, that is probably the accepted treatment in this country, two weeks for a treatment.

Q. Two weeks. Isn't it usually at least twenty days or more?

A. At least it must work in two weeks. I am speaking of actual treatment. The withdrawal symptoms should be pretty well gone in two weeks, according to the Lambert treatment.

Q. As a matter of fact, when anyone addicted to narcotics gets into an institution for any kind of a cure they are required to stay at least twenty days or more, aren't they?

A. I don't think there is any requirement whatsoever.

Q. Isn't that the usual thing? Is it? You can't do much in less than twenty days, can you?

A. It depends entirely on the individual.

Q. You do the work in two weeks?

A. I have dismissed any number in two weeks with a complete absence of any withdrawal symptoms. That is not a cure, as you well know.

Q. You have discharged them in two weeks?

A. I have, and they were entirely free of any withdrawal symptoms.

Q. Have you known of other doctors not discharging them for [154] at least twenty days or more?

A. I believe you could find other degrees of treatment.

(Testimony of Francis Kearney.)

The Court: What do you mean by 'withdrawal symptoms'?

A. The typical symptom that an addict gets when he does not get his drug.

Mr. Abrams: Q. Doctor, did you see Mr. and Mrs. Baldwin the first day they arrived there?

A. I don't believe I did. I don't recall whether it was the second or third day.

Q. As a matter of fact, it was either the second or third day after they got there that you saw them?

A. I may have seen them the first; I don't recall exactly. Lots of times I don't see the patients the day they arrive; I am just too busy, that is all.

Q. Do your records indicate the first time you saw them?

A. I believe there is a note in the record when I first visited them.

Q. You have your records?

A. No; I mean the records in the sanitarium.

Q. Will these cards indicate at all the first time you saw them? A. I don't believe they do.

Q. They do not? A. I don't know.

Mr. Davis: Well, show them to the doctor.

The Witness: Let me see them. I don't believe there is any indication. No; it is just the date of the report. We are given a few days leeway on that.

Mr. Abrams: That is all. [155]

## TESTIMONY OF ELLEN JONES

For the United States. In Rebuttal.

Ellen Jones, produced as a witness on behalf of the United States in rebuttal, having been first duly sworn, testified substantially as follows:

My name is Ellen Jones. I am a trained nurse employed at the Patterson Sanitarium in San Leandro. On the 6th day of April 1944, I know of my own knowledge that two patients by the name of Mr. and Mrs. Baldwin were admitted to the Patterson Sanitarium. I see them here in the courtroom today.

“Q. Will you point them out to us, please?

A. Yes (indicating).

Mr. Davis: May the record show that the witness has identified the defendants?

The Court: The record will so show.”

The witness testified further: I am superintendent of nurses, at the Patterson Sanitarium, and in such capacity supervise the medication or treatment prescribed by the doctors. Mr. and Mrs. Baldwin were being treated for drug addiction. I know that the treatment prescribed for them was for drug addiction. I administered some of the treatment myself to both Mr. and Mrs. Baldwin. It consisted of injections of morphine. I have with me some of the records of the hospital showing the admission of these patients.

“Q. I will show you this card, Miss Jones, and ask you to tell us what this card is, in the records of the sanitarium.



(Testimony of Ellen Jones.)

A. That is an admittance card.

Q. As a matter of custom in the sanitarium, is it the practice to make out an admittance card for each patient who is admitted? A. Yes.

Q. This is the admission card for Mr. W. L. Baldwin? A. That's right. [156]

Mr. Davis: I will read it (reading):

'Name Baldwin W. L. Mr.

Address 874 Pine St San Francisco

Physician Dr. Kearney

Date admitted April 6th Thus—6 p.m.

Date Discharged

Bldg. Main Room

Rate 50.00

Sanitarium care arranged by Self

Address 874 Pine St., San Francisco

In Emergency Phone Ord—3444

I hereby assume all financial responsibility for sanitarium care: L. W. Baldwin

Address Same.'

Q. This is the record, the admission card, is it not? A. It is.

Q. Did you also examine the record card of Mrs. Baldwin? A. Yes.

Q. Is there anything on Mrs. Baldwin's card other than what appears on this?

A. No, it is the same.

Q. Is it the custom or practice at the sanitarium at any time to write the diagnosis of the disease or malady for which the patients are being treated upon this record card? A. No.

(Testimony of Ellen Jones.)

Mr. Abrams: I object to that as incompetent, irrelevant, and immaterial. We are not concerned with custom. We want to know what was done in this particular case.

Mr. Davis: Q. Well, in this particular case did you write—— A. No.

Q. (continuing) ——the diagnosis?

Mr. Abrams: The card speaks for itself. [157]

Mr. Davis: Q. Is it the custom to write that on there?

Mr. Abrams: Just a moment.

The Witness: A. No.

Mr. Abrams: Just a moment, lady. Will you give me a chance to make an objection?

The Court: State your objection.

Mr. Abrams: I object to it on the ground it is incompetent, irrelevant, and immaterial, calling for an opinion and conclusion of the witness, asking for a custom.

Mr. Davis: I am entitled to show that this particular card is the admission card of the patient, and find out what the custom is, if it is the custom to put any such diagnosis on the card.

The Court: Overruled.

Mr. Abrams: Exception.

Mr. Davis: I offer this card in evidence.

The Court: Admitted.

(The document was marked U. S. Exhibit 5 in evidence.)

Mr. Davis: Q. Miss Jones, in your capacity as superintendent of nurses, you have custody of

(Testimony of Ellen Jones.)

the records at the Patterson Sanitarium relative to the treatment given to patients?      A. Yes.

Q. I show you these two documents and ask you if those are the records kept in the regular course of business.      A. Yes.

Q. At the sanitarium, covering the medication and treatment of patients admitted?      A. Yes.

Q. Are those—is one of those the record of Mr. Baldwin and the other of Mrs. Baldwin?

A. Yes.

Q. This is a history of their treatment each day?

A. Yes.

Q. That they were in the hospital?

A. Yes, sir.

Q. In other words, this is what a layman calls the chart? [158]      A. Yes.

Q. The nurse's record and the chart that is kept?      A. Yes.

Mr. Davis: At this time I offer both of these records of Mr. and Mrs. Baldwin in evidence, as Government's Exhibit next in order.

Mr. Abrams: Objected to as incompetent, irrelevant, and immaterial.

The Court: Overruled.

(The charts were marked U. S. Exhibits 6 and 7 in evidence.)

Mr. Abrams: Exception."

#### Cross-Examination

"Mr. Abrams: Q. I just want to ask you what is quarter grain M.S.; is that quarter grain morphine sulphate solution?

(Testimony of Ellen Jones.)

A. Quarter grain of morphine sulphate, yes.

Q. Quarter grain tablet?

A. That's right."

#### Redirect Examination

"Mr. Davis: Q. I just want to ask you one question: You are familiar with the manner in which prescriptions are written, are you not?

A. Yes.

Q. Would you say that on this card where it says 'M.S. gr' and in Roman numerals the figure 'I' and 'V', does that indicate  $\frac{1}{4}$  grain, or 4 grains?

A. That would be 4 grains in twenty-four hours, giving one grain at 8, 12, 4 and 8."

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#### TESTIMONY OF THOMAS E. McGUIRE

a witness previously sworn, called for the United States in rebuttal:

I heard Mr. Cowan testify in this case to certain conversations which he had with me. In those conversations I did not tell Mr. Cowan that I wanted him to come to the Federal Court [159] and testify before the grand jury that the narcotics that he had purchased and which he had in his possession at the time he was arrested had been purchased for Mr. Brady. The only interest I had in Mr. Cowan testifying was to testify against the man whom Mr. Cowan had purchased the narcotics from. That man was known *was known* to me, and the only in-

(Testimony of Thomas E. McGuire.)

terest I had in Mr. Cowan's testifying at the time was to testify against the person from whom Mr. Cowan had purchased the narcotics. On the 4th day of April of this year I arrived outside of the Commodore Hotel in the afternoon and was there from approximately one o'clock on. While observing the Commodore Hotel I saw Mr. Cowan leave the hotel somewhere around three o'clock in the afternoon. We followed him, and he went to a gambling house located at Eddy and Mason Street, I believe. It is known as the Day and Night gambling house. I returned to my position outside the Commodore Hotel and remained there until Mr. and Mrs. Brady left in their car to go out to Van Ness Avenue and Lombard Street. Up to that time I had not seen Mr. Cowan return to the hotel.

#### Cross-Examination

I am not sure that the Day and Night gambling house is at Eddy and Mason. It could be Turk and Mason. It is diagonally across the street from the Columbia Hotel.

Whereupon the Government rested its case on rebuttal.

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#### TESTIMONY OF LAWRENCE W. BRADY,

one of the defendants previously sworn, called in his own behalf in surrebuttal:

“Mr. Abrams: Q. Mr. Brady, will you remove your coat and pull your sleeve up, your shirt sleeve?  
A. Yes.



(Testimony of Lawrence W. Brady.)

Q. On both arms.           A. Yes. [160]

Q. Display them to the jury.

(The witness displayed his bare arms to the jury.)

Mr. Abrams: Put your coat back on. That is all.

Mr. Davis: That is all."

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#### TESTIMONY OF MARGARET BRADY,

one of the defendants, previously sworn, called in her own behalf in surrebuttal.

"Mr. Abrams: Q. Mrs. Brady, take your coat off.           A. All right.

(The witness displayed her bare arms to the jury.)

Mr. Abrams: Q. Now, put it on. Just sit up there a minute."

The witness testified further: I was in that hospital for three or four days before the doctor came to see me. I had developed a pain in my side, and the lady there called some doctor. We never called a doctor of any kind.

## TESTIMONY OF MARGARET BRADY,

one of the defendants, previously sworn, recalled in her own behalf in surrebuttal.

I asked the doctor to give me medicine for the pain in my side, and did not ask him for anything else. I told him that I had a very bad pain. In fact, the nurse thought it possibly could be appendicitis. That was why she called the doctor then. The doctor did not tell me what he was giving me in the way of medicine or medical treatment. I never told the doctor that I was an addict or had been using heroin; neither did my husband, because we were both in the same room. [161]

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## TESTIMONY OF LAWRENCE W. BRADY,

one of the defendants, previously sworn, recalled in his own behalf in surrebuttal.

I was in the hospital approximately three days before the doctor came. I did not send for the doctor, and I don't know who did. I never saw the man before he showed up that night. I never asked the doctor for anything but a sleeping pill, which he gave me and which I took with water, and he gave me another brown pill and treated me for nerves. I never asked him for anything. I never knew what I was getting in the way of medicine and nobody explained it to me. Different nurses gave me the medicine. I saw the doctor only the one time he came to examine my wife. I never told the doctor

(Testimony of Lawrence W. Brady.)

that my wife and I were addicted to drugs. He was not sent for for that. He was sent for to relieve my wife of excruciating pain in her side. If he administered any drugs he did it of his own accord. When I entered the hospital I did not tell them that I was an addict or that I was there for addiction treatment. I told them that my wife had an extremely bad case of nerves, and I also had bad nerves. It was emphatically understood that I was to leave as soon as my wife was better. I stayed three or four days.

#### Cross-Examination

I did not receive any injection by the use of a hypodermic needle intravenously while in the sanitarium. I received an injection in the shoulder once or twice, but I don't know what it was for.

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Mr. Abrams: Your Honor, I omitted something. Pardon the interruption. I meant at the close of the case, your Honor, to ask your Honor to strike from the record all testimony of the witnesses concerning this hospitalization of the defendants at [162] the Patterson Sanitarium, as being irrelevant matter, wholly unconnected with the issues of this case, and not binding upon the defendants.

The Court: Motion will be denied.

Mr. Abrams: Exception.

Whereupon the defendants rested their case in surrebuttal.

Whereupon the case was argued to the jury by counsel for the United States and for the Defendants.

Thereafter, the arguments having been concluded, the Court [163] instructed the jury.

Thereafter, the instructions to the jury having been concluded, the case was submitted to the jury, and thereafter the jury returned into court and rendered a verdict finding the defendants and each of them guilty on each of the two counts in the indictment.

Thereafter counsel for the defendants moved the Court in arrest of judgment, which motion in arrest of judgment is as follows:

“[Title of Court and Cause.]

MOTION OF LAWRENCE W. BRADY AND  
MARGARET BRADY IN ARREST OF  
JUDGMENT

Come now the defendants Lawrence W. Brady and Margaret Brady in the above entitled action, and against whom a verdict of guilty was rendered on the 8th day of June, 1944, in the above entitled cause, and move the Court to arrest the judgment against said defendants and hold for naught the verdict of guilty rendered against said defendants upon each and every count, for the following causes:

1. That the verdict is contrary to the evidence adduced at the trial herein.

2. That the verdict is not supported by the evidence in the case.

3. That the evidence adduced at the trial is insufficient to justify said verdict.

4. That said verdict is contrary to law.

5. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the trial court erred in admitting evidence in the course of the trial which was hearsay.

7. That the trial court erred in denying defendants' petition made in writing to quash arrests and for dismissal [164] on all the grounds urged in said written petition which was filed on April 29, 1944.

8. That the trial court erred in admitting in evidence during the course of the trial a package which contained the narcotics described in the indictment, which was taken by the Federal narcotic agents unlawfully and in violation of defendants' Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

9. That the trial court erred in permitting testimony to be given during the course of the trial concerning the package containing the narcotics mentioned in the preceding paragraph, said seizure being in violation of defendants' Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.



10. That the trial court erred in overruling defendants' repeated objections made during the course of the trial to the admission of such evidence referred to in paragraph 8 and testimony in connection therewith.

11. That the trial court erred in denying defendants' motion made at the close of the case to strike out all testimony of witnesses concerning the hospitalization of defendants in a sanitarium and their examination and treatment there.

12. That the trial court erred in admitting in evidence certain records made by the witness Dr. Francis Kearney entitled 'Report to Division of Narcotic Enforcement' and all testimony in connection therewith, and in refusing to strike the same from the record.

13. That the trial court erred in admitting in evidence testimony of witnesses, including Dr. Francis Kearney and Ellen Jones concerning the hospitalization of defendants in [165] a sanitarium and their examination and treatment there, and a certain admission card of W. L. Baldwin to said sanitarium and hospital records entitled 'Doctor's Orders' in the cases of W. L. Baldwin and Mrs. Baldwin.

14. That the trial court erred in denying defendants' motion, made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the legal evidence as a matter of law was insufficient to support a verdict of guilty.

Wherefore, because of which said errors in the record hereof, no lawful judgment may be rendered by the Court, said defendants pray that this motion be sustained and that judgment of conviction against them be arrested and held for naught and that they have all such other orders as may seem meet and just in the premises.

This written motion is by leave of Court and supplements the oral motion heretofore made by said defendants, and is made upon the minutes of the Court, upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial herein.

Dated: June 10, 1944.

SOL A. ABRAMS

Attorney for Defendants’.

Which said motion in arrest of judgment was by the Court denied, to the denial of which the defendants duly and regularly excepted.

Thereafter counsel for the defendants moved the Court for a new trial, which motion for a new trial was as follows:

“[Title of Court and Cause.]

#### MOTION FOR A NEW TRIAL

Now come the defendants Lawrence W. Brady and Margaret Brady in the above entitled action and move this Honorable [166] Court for an order vacating the verdict of the jury convicting said defendants, and granting said defendants a new

trial on both counts of the indictment for the following, and each of the following causes materially affecting their Constitutional rights, to wit:

1. That the verdict is contrary to the evidence adduced at the trial herein.

2. That the verdict is not supported by the evidence in the case.

3. That the evidence adduced at the trial is insufficient to justify said verdict.

4. That said verdict is contrary to law.

5. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid.

6. That the trial court erred in admitting evidence in the course of the trial which was hearsay.

7. That the trial court erred in denying defendants' petition made in writing to quash arrests and for dismissal on all the grounds urged in said written petition which was filed on April 29, 1944.

8. That the trial court erred in admitting in evidence during the course of the trial a package which contained the narcotics described in the indictment, which was taken by the Federal narcotic agents unlawfully and in violation of defendants' Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

9. That the trial court erred in permitting testimony to be given during the course of the trial concerning the package containing the narcotics mentioned in the preceding paragraph, said seiz-

ure being in violation of defendants' [167] Constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States.

10. That the trial court erred in overruling defendants' repeated objections made during the course of the trial to the admission of such evidence referred to in paragraph 8 and testimony in connection therewith.

11. That the trial court erred in denying defendants' motion made at the close of the case to strike out all testimony of witnesses concerning the hospitalization of defendants in a sanitarium and their examination and treatment there.

12. That the trial court erred in admitting in evidence certain records made by the witness Dr. Francis Kearney entitled 'Report to Division of Narcotic Enforcement' and all testimony in connection therewith, and in refusing to strike the same from the record.

13. That the trial court erred in admitting in evidence testimony of witnesses, including Dr. Francis Kearney and Ellen Jones concerning the hospitalization of defendants in a sanitarium and their examination and treatment there, and a certain admission card of W. L. Baldwin to said sanitarium and hospital records entitled 'Doctor's Orders' in the cases of W. L. Baldwin and Mrs. Baldwin.

14. That the trial court erred in denying defendants' motion made at the close of plaintiff's case, for a directed verdict of acquittal on both counts of the indictment, for the reason that the

legal evidence as a matter of law was insufficient to support a verdict of guilty.

To all of which rulings these defendants duly and regularly excepted.

This written motion, by leave of Court, supplements the [168] oral motion heretofore made by said defendants, and is made upon the minutes of the Court, upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial herein.

Dated: June 10, 1944.

S. A. ABRAMS

Attorney for defendants."

Which said motion for a new trial was by the Court denied, to the denial of which the defendants duly and regularly excepted.

The said motions in arrest of judgment and for a new trial having been denied, the Court proceeded to pass judgment upon the defendants, and thereafter, and on June 10, 1944, the Court imposed judgment and sentence upon the defendant Lawrence William Brady as follows: That defendant Lawrence William Brady on Count One of Indictment No. 28520-R serve a term of three years in a United States Penitentiary, to be designated by the Attorney General of the United States, and pay a fine of \$1000.00; that defendant Lawrence William Brady on Count Two of Indictment No. 28520-R serve a term of three years in a United States Penitentiary, to be designated by the Attorney General of the United States, and pay a fine



of \$1000.00; the judgments on Count One and Count Two of Indictment No. 28520-R to run consecutively.

The above bill of exceptions contains all of the evidence, oral and documentary, and all of the proceedings relating to the trial, conviction, motion in arrest of judgment, motion for a new trial, and judgment and sentence.

Dated: San Francisco, California, July 5, 1944.

SOL A. ABRAMS

Attorney for Appellant.

Lodged July 5, 1944.

[Endorsed]: Filed Aug. 15, 1944. C. W. Calbreath, Clerk. [169]

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[Title of District Court and Cause.]

## ORDER SETTLING BILL OF EXCEPTIONS

Pursuant to stipulation of counsel, it is hereby ordered that that certain document of one hundred twenty-seven pages, lodged with the Clerk of this Court on July 5, 1944, entitled Bill of Exceptions, of the defendant Lawrence W. Brady may be and the same is hereby considered to truthfully set forth the proceedings had upon the trial of the defendant Lawrence W. Brady and that it contains in narrative form all of the testimony taken upon the trial together with all of the objections made by said defendant and the rulings thereon and the exceptions noted by said de-

fendant and it may be and is hereby settled, allowed, certified and approved as the Bill of Exceptions in the above entitled matter;

And it is further ordered that the Clerk of said Court file the same as a record in said case and transmit it to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Dated: August 15, 1944.

MICHAEL J. ROCHE.

United States District Judge.

[Endorsed]: Filed Aug. 15, 1944. C. W. Calbreath, Clerk. [170]

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District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 170 pages, numbered from 1 to 170, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of The United States of America, vs. Lawrence W. Brady, No. 28520 R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$9.80 and that the said amount

has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of August.  
A. D. 1944.

[Seal]

C. W. CALBREATH,

Clerk

M. E. VAN BUREN

Deputy Clerk [171]

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[Endorsed]: No. 10809. United States Circuit Court of Appeals for the Ninth Circuit. Lawrence W. Brady, Appellant. vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed August 24, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1943, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the seventeenth day of July in the year of our Lord one thousand nine hundred and forty-four.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable William Healy, Circuit Judge.

No. 10809

LAWRENCE W. BRADY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER ADMITTING APPELLANT  
TO BAIL

Upon consideration of the motion of appellant for admission to bail pending appeal, and good cause therefor appearing, It Is Ordered that such motion be, and hereby is granted, and that appellant be admitted to bail pending appeal upon the giving of a bail bond in amount of Five thousand dollars (\$5,000.00) conditioned as required by law, the bond to be approved by the United States Attorney for the Northern District of California,—

if personal sureties the sureties to justify before the United States Commissioner for said District—and by a Judge of this Court, and to be filed with the clerk of this Court.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10809

LAWRENCE W. BRADY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

### BAIL BOND ON APPEAL

Know All Men By These Presents:

That we, Lawrence W. Brady, of the City and County of San Francisco, State of California, as principal, and the National Automobile Insurance Company, a California corporation, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of Five Thousand (\$5,000.00) Dollars, for the payment of which sum we, and each of us, bind ourselves, our heirs, executors and assigns.

The condition of the foregoing obligation is as follows:

Whereas, lately, to-wit, on the 10th day of June, 1944, at a term of the United States District Court



in and for the Northern District of California, Southern Division, in an action in said court numbered 28520-R, in which the United States of America was plaintiff and Lawrence W. Brady was defendant, judgment and sentence was made, given, rendered and entered against the said Lawrence W. Brady in said action, whereas he was convicted as charged in the indictment in said action.

Whereas, in said judgment and sentence so made, given, rendered and entered against said Lawrence W. Brady in said action, he was sentenced by said judgment to imprisonment and fines as follows: Three years imprisonment and a fine of \$1000 on first count; three years imprisonment and a fine of \$1000 on second count, sentences to run consecutively.

Whereas, the said Lawrence W. Brady has filed a Notice of Appeal from said conviction and from said judgment and sentence appealing to the United States Circuit Court for the Ninth Circuit; and

Whereas, the said Lawrence W. Brady has been admitted to bail pending the decision upon said appeal in the sum of Five Thousand (\$5,000.00) Dollars by order of the United States Circuit Court of Appeals for the Ninth Circuit made and entered on the 17th day of July, 1944, in the above entitled matter;

Now, Therefore, the conditions of this obligation are such that if said Lawrence W. Brady shall appear in person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Cir-

cuit on such day or days as may be appointed for the hearing of said cause in said Court and shall prosecute his appeal, and if said Lawrence W. Brady shall abide by and obey all orders made by said United States Circuit Court of Appeals for the Ninth Circuit, and if said Lawrence W. Brady shall surrender himself in execution of such judgment and sentence if the judgment and sentence be affirmed by the United States Court of Appeals for the Ninth Circuit, and if said Lawrence W. Brady will appear for trial in the District Court of the United States in and for the Northern District of California, Southern Division, on such day or days as may be appointed for the re-trial by said District Court if the said judgment and sentence against him be reversed, then this obligation shall be null and void; otherwise to remain in full force and effect.

This recognizance shall be deemed and construed to contain the "express agreement", summary judgment and execution thereon mentioned in Rule 34 of the District Court.

LAWRENCE W. BRADY,  
Principal.

I certify that this is the signature of the principal herein.

[Seal]                      STUART H. ELLIOTT,  
U. S. Commissioner, Western District of Wash.,  
Southern Div.

[Seal]                      NATIONAL AUTOMOBILE  
INSURANCE CO.,  
a California corporation,  
By B. WATSON,  
Attorney-in-Fact.

I hereby certify that I have examined the above bond and that, in my opinion, the form thereof is correct and the surety thereon is qualified.

SOL A. ABRAMS,  
Attorney for Defendant and  
Appellant.

The foregoing bond is approved this 5th day of August, 1944.

FRANK J. HENNESSY,  
United States Attorney.  
By I. Q. CADERS,  
Assistant United States At-  
torney.

The foregoing bond is approved this 11th day of August, 1944.

WILLIAM HEALY,  
Judge of the United States Circuit Court of Ap-  
peals, Ninth Circuit.

This power of attorney is hereby attached to and made a part of Bond No. 30440, Lawrence W. Brady, Appellant.

Certified Copy

**POWER OF ATTORNEY**

National Automobile Insurance Company  
Know All Men By These Presents:

That the National Automobile Insurance Company, a corporation organized and existing under the laws of the State of California, and having its principal office in the City of Los Angeles, California, does hereby constitute and appoint B. Watson of the City of San Francisco, State of California, its true and lawful Attorney-in-Fact, to execute, seal and deliver for and on its behalf as Surety any and all bonds and undertakings not exceeding in penalty the sum of Ten Thousand and No/100 Dollars (\$10,000.00) each, which are or may be allowed, required, or permitted by law, statute, rule, regulation, contract, or otherwise. And when such bonds or undertakings shall have been duly executed pursuant hereto and the corporate seal affixed they shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the duly elected officers of the Company at its Principal Office.

In Testimony Whereof, the National Automobile Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its officers this 9th day of October, 1942.

[Seal]                    NATIONAL AUTOMOBILE  
INSURANCE COMPANY,

By JOHN Q. McCLURE,  
President

By O. W. MOORE,  
Secretary

State of California

County of Los Angeles—ss.

On this 9th day of October, 1942, before me, M. T. Logan, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared John Q. McClure and O. W. Moore to say that they are respectively the President and Secretary of the National Automobile Insurance Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said John Q. McClure and O. W. Moore acknowledge said instrument to be the voluntary act and deed of said corporation.



In Witness Whereof, I have hereto set my hand and affixed my official seal the day and year first above written.

[Seal]

M. T. LOGAN,

Notary Public in and for said  
County and State.

My Commission Expires Jan. 8, 1946.

State of California,

City and County of San Francisco—ss

On this 4th day of August, in the year 1944, before me, George B. Gillin, a Notary Public in and for said County and State, personally appeared B. Watson, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance Company thereto as principal, and his own name as Attorney-in-fact.

[Seal]

GEORGE B. GILLIN,

Notary Public in and for said  
County and State.

My Commission Expires December 24, 1946.

State of Washington

County of Pierce—ss

I, W. J. Haniger, a duly authorized officer, having the power and authority to administer oaths in said cause do hereby certify that on this, the 10th day of August, 1944, personally appeared before me Lawrence W. Brady, to me known to be the individual described in and executed the foregoing

bond, and acknowledged that he signed and sealed the same as his free and voluntary act for the uses and purposes therein mentioned.

In Witness Whereof, I have hereto set my hand in the day and year this signature first above was written.

W. J. HANIGER,  
Acting Warden.

Authorized to administer oaths by the Act (Public No. 426) approved February 11, 1938.

Approved by me this 10th day of August, 1944.

[Seal] STUART H. ELLIOTT,

U. S. Commissioner for the Western District of  
Washington, Southern Division.

United States of America,  
Western District of Washington,  
Southern Division—ss:

### CERTIFICATE

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that Stuart H. Elliott, whose name is subscribed to the foregoing instrument, is, and was at the time of subscribing the same, United States Commissioner for the Western District of Washington, at Tacoma, duly appointed, qualified and commissioned, and that full faith and credit are due to all his official acts as such.

In Witness Whereof, I have hereunto set my hand and official seal of said Court, at Tacoma, Washington, this 10th day of August, 1944.

[Seal] JUDSON W. SHORETT,  
Clerk,  
By E. E. REDMAYNE,  
Deputy.

[Endorsed]: Filed Aug. 11, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED ON AND  
DESIGNATION OF PARTS OF TRAN-  
SCRIPT TO BE PRINTED

Comes now Lawrence W. Brady, the appellant herein, and advises the Court that he intends to rely on the following points in his appeal:

All points specified as errors in the Assignment of Errors, Notice of Appeal, and memorandum entitled "Additional Grounds on Notice of Appeal", heretofore filed and appearing in the transcript of record and by reference incorporated herein.

DESIGNATION OF PARTS OF TRANSCRIPT  
TO BE PRINTED

In support of appellant's position, appellant believes it necessary to print the entire record.

Dated: September 1, 1944.

SOL A. ABRAMS,

Attorney for Appellant.

Receipt of copy of within statement is hereby acknowledged this 1st day of September, 1944.

FRANK J. HENNESSY,

United States Atty.

[Endorsed]: Filed Sept. 1, 1944. Paul P. O'Brien, Clerk.

